



Agenda for 47th GST Council Meeting

28-29 June 2022

Volume – 1





**Council Secretariat
New Delhi**

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
18th June, 2022

OFFICE MEMORANDUM

Subject: Notice for the 47th Meeting of the GST Council scheduled to be convened on 28th & 29th June, 2022- Reg.

The undersigned is directed to refer to the subject stated above and to convey that the 47th Meeting of the GST Council will be held on **28th & 29th June, 2022** in **Chandigarh**. This Notice is in supersession of earlier Notice dated 17th June, 2022 on the above mentioned subject. The schedule of the Meeting is as follows:

- **Tuesday, 28th June, 2022:** 11:00 Hours onwards
 - **Wednesday, 29th June, 2022:** 11:00 Hours onwards
2. In addition, an **Officers Meeting** will be held on 27th June 2022 as per the following schedule:
- **Monday, 27th June 2022:** 11:00 Hours onwards
3. The exact venue, agenda items and other details for the 47th 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 the GST council.
5. Kindly convey the invitation to Hon'ble Member to attend the 47th 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 the 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 proceeding 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 45th GST Council Meeting 17th

September 2021

The 45th meeting of the GST Council (hereinafter referred to as 'the Council') was held on 17th September 2021 at Lucknow 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 45th Meeting of the Council:

1. Confirmation of Minutes of GST Council Meetings
 - i. 43rd GST Council Meeting held on 28th May 2021
 - ii. 44th GST Council Meeting held on 12th June 2021
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
3. Issues recommended by the Law Committee for the consideration of the GST Council
 - i. Aadhaar authentication of existing taxpayers under GST
 - ii. Agenda Note for issuance of clarification relating to export of services-condition (v) of the Section 2 (6) of the IGST Act 2017
 - iii. Clarification in respect of certain GST related issues
 - iv. Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal
 - v. Mechanism to collect late fee imposed under section 47 of the CGST Act for delayed filing of FORM GSTR-1
 - vi. Review of requirement of filing FORM GST ITC-04
 - 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
 - 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)
 - 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-
 - x. Transfer of CGST /IGST cash ledger balance between 'distinct persons' (entities having same PAN but registered in different states)
 - xi. Additional measures to tackle the menace of fake invoices: Amendment to rule 36(4) of the CGST Rules, 2017

- xii. Additional measures to tackle the menace of fake invoices: Amendment to rule 59(6) of the CGST Rules, 2017
 - xiii. Agenda Note for amendment in Section 54 of the CGST Act, 2017
 - xiv. Clarification on doubts related to scope on “intermediary”
 - xv. Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route
4. Nominations from State Governments on Board of GSTN.
 5. Performance Report of the NAA (National Anti-profiteering Authority) for the 1st quarter (April to June, 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. Report of Group of Ministers (GoM) on levy of Covid Cess on Pharma and Power in Sikkim.
 8. Closure of Group of Ministers (GoM) on concessions/ exemption from GST to COVID relief material
 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 sect
 10. Transposition of GST rate notifications consequent to changes in tariff item codes in the First Schedule to the Customs Tariff Act, 1975.
 11. GST rate on job works services in relation to manufacture of alcoholic liquor for human consumption.
 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.
 13. Concessions to specified drugs used in Covid-19 treatment till 31st December, 2021
 14. Issues recommended by the Fitment Committee for the consideration of the GST Council
 15. Recommendations of the 15th IT Grievance Redressal Committee for approval/decision of the GST Council
 16. Agenda Note for GST Council on National Anti-Profiteering Authority
 17. Review of Revenue Position under Goods and Services Tax
 18. Compensation- Scenario Post June-2022 and Options

Preliminary discussion

3. The Hon’ble Chairperson invited the Union Revenue Secretary and ex-officio Secretary to the GST Council to begin the proceedings. The Secretary welcomed all participants to the 45th meeting of the GST Council and stated that this physical meeting is being held after the 38th meeting held a year and a half ago.

3.1. The Secretary, GST Council at the outset placed on record his gratitude and sincere appreciation on behalf of the Council for the valuable contribution made to the Council by the outgoing Hon'ble MoS (Finance) Sh. Anurag Singh Thakur and welcomed the new Hon'ble MoS (Finance) Sh. Pankaj Chaudhary to the Council. He also welcomed Sh. Lakshminarayanan, the Hon'ble Minister for Public Works, Puducherry, Sh. Badal Patralek, the Hon'ble Minister for Agriculture, Animal Husbandry and Co-operative Department, Jharkhand; and Ms. Chandrima Bhattacharya, the Hon'ble Minister of State for Urban Development and Municipal Affairs Department, West Bengal, who were attending the GST Council meeting for the first time.

3.2. He informed the Council that on the previous day (16th September 2021), he met the Officers from all the States and his colleagues from the Centre and had an excellent discussion and deliberations on various agenda items. They were able to reach a consensus on most issues. On the items, where there were still differences, those would be placed before the Council for a decision. He sought the permission of the Chairperson to take up individual agenda items for consideration of the Council.

Agenda Item 1: Confirmation of the Minutes of the 43rd and 44th GST Council Meeting

4. The first agenda item pertained to confirmation of the minutes of the 43rd GST Council meeting held on 28th May, 2021 and the 44th GST Council meeting held on 12th June, 2021. He further stated that few comments had been received from some States, which were basically editorial changes and had been carried out. The Secretary proposed that the Council may confirm the Minutes of the 43rd and 44th GST Council meetings with the changes suggested above. The Council decided to adopt the Minutes of the 43rd and 44th meeting of the GST Council with the changes as proposed.

Agenda Item 2: Ratification of the Notifications, Circulars and Orders issued by the GST Council and decisions of the GST Implementation Committee (GIC) for the information of the Council

5. The Secretary stated that the second agenda item pertained to ratification of the notifications, circulars, and orders issued by the GST Council and the decisions of the GST Implementation Committee (GIC) for the information of the Council. He stated that the GIC decisions are also implemented through notifications, circulars, and orders. The Council took note of the decisions of the GST Implementation Committee (GIC) and ratified the same. Further, the notifications, circulars and orders issued by the States which were *pari materia* with above notifications, circulars and orders were also deemed to have been ratified.

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

6. The Secretary to the Council took up the next Agenda on issues recommended by the Law Committee for the consideration of the GST Council. He informed that these agendas were discussed in detail in the Officers' Meeting held on 16th September, 2021 and there was agreement in the Officers' meeting on most of the issues of this agenda, except for a couple of issues on which the decision of the GST Council was required. Thereafter, Principal Commissioner, GST (Policy Wing) made a detailed presentation (attached at **Annexure-III**) giving overview of the recommendations made by the Law Committee.

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

7. The Principal Commissioner GSTPW informed that the provision for Aadhaar authentication for new registration has already been implemented. As regards Aadhaar authentication for existing registrations, the Law Committee recommended that the requirement to get the GST registration Aadhaar authenticated may be made mandatory on such occasions where there is a potential threat to revenue or the taxpayer is availing a beneficial provision under the GST law. Law Committee further recommended that to start with, Aadhaar authentication may be made mandatory for being eligible for refund and revocation of cancellation of registration and recommended amendment in CGST Rules, 2017 to this effect. The Council unanimously agreed to the proposal. It was also decided that the amendments to the rules, as proposed in the agenda note, would be notified when requisite IT readiness is made on the portal.

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

7.1 The Principal Commissioner, GSTPW informed that in order to clarify the issues arising due to different interpretations by field formations on export of services, it has been recommended by the Law Committee to clarify through a circular that a person incorporated in India under the Companies Act, 2013 and a foreign company, i.e. a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be considered merely establishments of distinct persons under Explanation 1 of Section 8 of IGST Act 2017. Accordingly, the supply between such persons 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. The Council unanimously agreed to the proposal.

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

7.2 The Principal Commissioner GSTPW mentioned that there are different practices about three (3) GST related issues and the Law Committee has recommended that these issues may be clarified by issuance of a Circular. He informed that the first issue is regarding the time limit for availing input tax credit in respect of a debit note as per Section 16(4) of CGST Act, 2017, as amended with effect from 01.01.2021. Law Committee recommended that with effect from 01.01.2021, in case of debit notes, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of Section 16(4) of CGST Act. He also added that the second issue is regarding need to carry the physical copy of tax invoice in cases where e-invoice is issued. Law Committee recommended 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 (i.e. e-invoices) and production of the QR code having an embedded IRN electronically would suffice for verification by the proper officer. The third issue is regarding availability of refund of accumulated input tax credit (ITC) under Section 54(3) of CGST Act, 2017, in cases where the goods are subjected to Nil export duty or where export duty of the goods is fully exempted. Law Committee recommended 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 vide second proviso to Section 54(3) of CGST Act from availment of refund of accumulated ITC. The Council agreed with the recommendation of the Law Committee, along with the proposed circular.

Agenda Item 3(iv): Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal

7.3 Section 146 of CGST Act, 2017 provides that the Common GST 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 and for such purposes as may be prescribed. Vide notification No. 4/2017 dated 19.06.2017 read with notification No. 9/2018 dated 23.01.2018, GST portal was notified for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, and electronic way bill only. Subsequently, vide notification No. 69/2019 dated 13.12.2019, GST portal has been notified for the purpose of preparation of the e-invoice. However, various other functions and purposes such as composition levy, input tax credit, refund, transitional provisions, etc. do not have a common portal notified yet. In order to prevent any legal challenges with respect to various online functionalities provided on GST portal, the Law Committee recommended 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, 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, as detailed in the agenda note. The Council unanimously agreed to the proposal.

Agenda Item 3(v): Mechanism to collect late fee imposed under Section 47 of the CGST Act for delayed filing of FORM GSTR-1

7.4 The Principal Commissioner, GSTPW mentioned that at present, the late fee for late filing of GSTR-3B was collected on the portal while filing the subsequent GSTR-3B but no such the late fee for delayed filing of GSTR-1 is being collected on the portal. The Law Committee recommended that the late fee for GSTR-1 should be auto-populated on the portal in next open return in FORM GSTR-3B and that the same may be implemented on portal for prospective tax periods (from July, 2021 tax period onwards). Law Committee also recommended amendment in Section 47 of CGST Act to delete reference to Section 38 of CGST Act, as detailed in the agenda note. There was agreement in the Council in respect of this proposal.

Agenda Item 3(vi): Review of requirement of filing FORM GST ITC-04

7.5 The Principal Commissioner, GSTPW added that the requirement of filing FORM ITC-04 on quarterly basis, by the registered persons, who send the goods for job work basis, was deliberated by the Law Committee. The Law Committee has recommended that rule 45(3) of CGST Rules 2017 may be amended to change frequency of filing FORM ITC-04 such that the taxpayers, whose annual aggregate turnover in preceding financial year is above Rs. 5 crores, shall furnish FORM ITC-04 once in six months and taxpayers, whose annual aggregate turnover in preceding financial year is up to Rs. 5 crores, shall furnish FORM ITC-04 annually. The Council unanimously agreed to the same and decided that it may be made effective with effect from 01.10.2021.

Agenda Item 3(vii): Amendment in CGST Rules for refund to be disbursed in bank account linked with PAN and Aadhaar on which registration has been obtained.

7.6 The Principal Commissioner, GSTPW informed that the agenda item 3(vii) was regarding an earlier decision of the GST Council, as per which in-principle approval was given by the GST Council for disbursing refunds to only those bank accounts which are linked with both PAN and Aadhaar, on which GST registration has been obtained. The issue was further deliberated by the Law Committee and it was discussed that since Aadhaar is issued only for natural persons (and not legal/juristic persons),

the requirement of both PAN and Aadhaar would be applicable only for proprietorship concerns. However, in case of other firms, the bank account should be required to be linked only to the PAN of the concerned legal entity. Law Committee also recommended amendment in CGST Rules, 2017 accordingly. During the officers' meeting, Tamil Nadu suggested slight modification in the proposal and recommended to link PAN with Aadhaar in case of proprietorship firm. The recommendation of the Law Committee, as amended as per suggestion given by Tamil Nadu, was agreed upon by the Council. It was also decided that the said amendments will be notified when necessary IT readiness on portal is made.

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)

7.7 The Principal Commissioner GSTPW took the agenda further. He mentioned that as per recommendation of the GST Council, Section 50(1) of CGST Act 2017 has been amended retrospectively with effect from 01.07.2017 to provide for requirement to pay interest on delayed payment of tax on net cash basis. However, doubts remain regarding whether interest is applicable only on ITC which has been wrongly 'availed' (and not utilized) or is applicable on the ITC wrongly 'availed and utilized', and representations have been received seeking clarification regarding applicability of interest on reversal of ineligible ITC in such cases. He also informed that the GST Council in its 43rd Meeting recommended to amend sub section (3) of section 50 of CGST Act to provide for payment of interest on ineligible ITC 'availed and utilized'. The Law Committee has recommended to make this amendment in sub-section (3) of Section 50 of CGST Act retrospectively with effect from 01.07.2017, to remove any ambiguity on this issue, which also goes with the spirit of the decision of the GST Council for levying interest on net cash basis. Law Committee also recommended to modify the wording of sub-section (3) slightly to provide for calculation of interest in the manner as prescribed in Rules, as detailed in the agenda note. It was also recommended by the Law Committee that 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. The Council agreed with the said recommendations of the Law Committee.

Agenda Item 3(ix): 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

7.8 The Principal Commissioner GSTPW mentioned that Section 77 of CGST Act 2017, read with Section 19 of IGST Act, provides for refund of tax wrongfully paid considering the supply as intra-state or inter-state supply, which is subsequently held as inter-state or intra-state respectively. He mentioned that there are doubts regarding time limit for claiming refund under the said provisions, as well as regarding interpretation of the term "subsequently held". The Law Committee recommended for insertion of sub-rule (1A) in rule 89 of CGST Rules 2017 for prescribing the procedure and time limit in respect of such refunds. The Law Committee also recommended for issuance of a circular to clarify the term "subsequently held" and time limit for filing such refund claims for past as well as prospective periods, to remove any ambiguity on the issue, as detailed in agenda note. There was unanimous agreement on the same in the Council.

Agenda Item 3(x): Transfer of CGST /IGST cash ledger balance between 'distinct persons' (entities having same PAN but registered in different states)

7.9 The Principal Commissioner, GSTPW mentioned that this issue relates to those cases where a person with same PAN has multiple registrations in different States. Presently, such distinct persons are

unable to transfer their balance in electronic cash ledger from one State to the another, on their own. There are no revenue implications involved since such person can get refund of the excess balance in electronic cash ledger in respect of registration in one State and deposit the same in respect of registration in another State. To remove this procedural requirement/ compliance and to ease the liquidity position of such taxpayers, it was recommended by Law Committee that unutilized balance in CGST and IGST cash ledger 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 said registered person. It was discussed that since the CGST and IGST funds go to the Consolidated Fund of India, the revenues of the States are not directly impacted. The recommendation of the Law Committee, as per agenda note, was agreed to by the Council. It was also suggested that Law Committee may be delegated to draft the amendment in relevant sections which may be finalized in consultation with the Union Ministry of Law & Justice.

Agenda Item 3(xi): Additional measures to tackle the menace of fake invoices: Amendment to rule 36(4) of the CGST Rules, 2017

7.10. The Principal Commissioner GSTPW mentioned 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. He added that this provision of Finance Act, 2021 would be brought into effect in due course as per recommendations of the Council, as and when the States pass their respective Finance Acts in their State Legislatures. When this provision is brought into force, there will be requirement to amend rule 36(4) of CGST Rules, 2017, since at present it allows for availment of ITC up to 105% of what has been provided in GSTR-1. The Law Committee has accordingly recommended to restrict availment of ITC on invoices/debit notes to that available in **GSTR-2B** of tax payer which is made available to them on the portal. The proposed amendment in CGST Rules would come into force as and when the clause(aa) to the sub-section (2) of Section 16 of the CGST Act, 2017 is notified. The said proposal was agreed to unanimously by the Council.

Agenda Item 3(xii): Additional measures to tackle the menace of fake invoices: Amendment to rule 59(6) of the CGST Rules, 2017

7.11. The Principal Commissioner, GSTPW mentioned that with effect from 1st January 2021, a new sub-rule (6) was inserted in rule 59 of CGST Rules which 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. This has also been implemented on the portal from the beginning of September, 2021. He added that the law amendments providing for sequential filing of FORM GSTR-1, and requirement of mandatory filing of FORM GSTR-1 before filing of FORM GSTR-3B, have already been recommended by the Council in its 43rd meeting. Accordingly, in order to further strengthen the provisions against fake invoicing, Law Committee has recommended 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/ tax period. 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. It was also recommended by the Law Committee to make the said amendment with effect from 01.01.2022. This proposal was unanimously agreed to by the Council.

Agenda Item 3(xiii): Amendment in Section 54 of the CGST Act, 2017.

7.12. The Principal Commissioner, GSTPW informed that certain anomalies/ discrepancies in provisions of Section 54 of CGST Act, 2017 have come to light which need to be corrected and the Law Committee, accordingly, has recommended to make certain amendments in Section 54 of CGST Act 2017, to address these anomalies. It is proposed to amend sub-section (2) of Section 54 of the CGST Act, 2017 so as to provide that time period of two years for filing refund under Section 55, in line with time period for other refunds under Section 54. Further, it is also proposed to amend sub-section (10) of Section 54 of the CGST Act, 2017 by deleting the words “under sub-section (3)”. It was also proposed to insert clause (ba) in Explanation (2) of Section 54 of CGST Act to specify relevant date for the zero rated supplies made to SEZ with or without payment of duty. The Council unanimously agreed on the said proposal.

Agenda Item 3(xiv): Clarification on doubts related to scope on “intermediary”

7.13. The Principal Commissioner, GSTPW informed that the issue of scope of “intermediary service” was earlier discussed in the 37th and 38th meeting of the GST Council. He added that that circular number 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, based on 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. He further mentioned that a large number of representations and references, including Parliament Questions, have been received citing difficulty being faced by trade and industry due to diverse practices being followed in interpretation of scope of “intermediary services”, leading to disputes, including rejection of refund claims and/or issuance of demand notices. The issue was again examined by Law Committee which recommended to issue a circular to clarify the scope of the ‘intermediary services’ as per the present provisions of the IGST Act so as to remove the doubts regarding this important issue of ‘intermediary’ as proposed in the agenda. The Council unanimously agreed to it.

Agenda Item 3(xv): Notifying supplies and class of registered person eligible for refund under IGST route.

7.14. The Principal Commissioner GSTPW drew the attention of the Council towards Section 123 of the Finance Act, 202, vide which Section 16 of IGST Act was proposed to be amended, based on the approval given by of the GST Council in 39th meeting. It was proposed that export under LUT would be made the default route and refund of ITC on payment of IGST would be restricted to only a notified class of taxpayers and/ or notified supplies of goods or services. The said provision is yet to be notified. The Law Committee recommended that all services may be notified, as class of supplies for the purpose of refund of IGST, as the refund of IGST paid on export of services is processed by the jurisdictional GST officer. Besides, the Law Committee also recommended to notify certain class of taxpayers, like persons who have been granted Authorized Economic Operator (AEO) certification under SAFE Framework of WCO; persons who have been granted status holder certification of 2 star or above by DGFT under Foreign Trade Policy; and Government Departments, Public Sector Undertakings, Local Authorities & Statutory Bodies.

7.15. He mentioned that this issue was discussed in detail in the Officers’ meeting. A view emerged in the Officers’ meeting that when the proposal to amend Section 16 of IGST Act 2017 to restrict IGST route was approved by Council in the 39th Meeting in March, 2020, a number of cases of fraudulent refunds through IGST route were noticed due to fraudulent availment of ITC. However, since then, a

number of measures have been taken, either through REAP project of GSTN (linking of GSTR-1 and GSTR-2B with GSTR-3B through auto-population), or through policy interventions to discipline return filing system and also to restrict availment of ineligible ITC (like rule 36(4), rule 59(6) etc.). Besides, a number of measures to tackle the menace of fake dealers/ fake invoices and the issue of wrong availment of ITC, have also been proposed in the current meeting of the Council. It was also discussed that as per recommendation of the Law Committee, the IGST route will be restricted to about 10% or less of the present number of exporters using IGST refund route, which may cause disruption in exports for a large number of exporters. Accordingly, it was felt that there may be a need to re-examine whether restriction of IGST route to such large extent needs to be undertaken at this stage, when the country needs a push to export. It may be desirable to wait for the time being to see the effect of the measures being undertaken and to identify those tax payers, in respect of whom IGST refund route may be restricted without affecting the exports.

7.16. The Secretary to the Council stated that when the decision was taken 18 months ago, things were very different. In case this provision is implemented at present, less than 10,000 out of 70,000-80,000 exporters, who are presently using IGST refund route, would have the availability of this seamless route for refund by payment of IGST. In the current scenario, when India is trying to increase its exports to \$ 400 billion, as per discussions in Officers' meeting, it was suggested that the Council may not go ahead with this provision at present since it would increase the burden on the exporters and also it is not certain whether the jurisdictional officers have the capacity to handle the large number of refund cases, if IGST refund route is restricted as per present recommendation of the Law Committee. He also added that if refunds are delayed because of the said amendment, it may not go well with a very important segment of the economy. Based on the discussions in the Officers' Meeting, he suggested that the proposal made in this agenda, along with notification of Section 123 of the Finance Act, 2021, vide which Section 16 of IGST Act was proposed to be amended, may be kept in abeyance for the time being and may be relooked at an opportune moment.

7.17. The Hon'ble Member from Delhi stated that 10,000 exporters would be taking the benefit of the IGST route for refunds and the question was about the remaining 60,000 odd exporters. He enquired if there was any rough assessment regarding the break-up of quantum of amount of refund taken by the above-mentioned exporter groups. He stated that it is a catch-22 situation where, it is visible that there may be some misuse of provisions and if the quantum of refund in question is found to be significant, then stringent anti-evasion measures have to be undertaken, otherwise it may not be prudent to burden the government machinery for the sake of low quantum of revenue. Principal Commissioner, GSTPW stated that the total refund amount through IGST route is slightly more than the Rs.1 lakh crores in three years. The Hon'ble Member from Delhi felt that it was quite a huge amount and stated that 50,000 to 60,000 exporters from all States may not be such a huge number and the combined machinery of the Central and State governments can handle the same. The Secretary clarified that the figure quoted by Principal Commissioner, GST Policy Wing was the total refund figure through IGST route and not the amount of refund claimed by misusing the provisions. Hon'ble Member of Delhi noted this and felt that in that case, the amount is not that alarming. The Secretary suggested that as a number of measures have been taken/ are being taken to curtail availment of ITC/ menace of fake invoices, the Council may wait for one or two meetings and understand the effects of implementation of these measures, since the burden of compliance due to proposed restriction of IGST refund route is huge. It may be prudent to wait for the time being, before bringing such major change into operation. The Hon'ble Member from Delhi agreed to this.

7.18. The Secretary to the Council also mentioned that in the 42nd Council meeting, the states were requested to get the amendments proposed through Finance Act 2021, passed through their State

Assemblies by 01.10.2021. As per recommendations of the Council, Section 110 and 111 of the Finance Act, 2021 have been notified by the Centre vide notification No. 29/2021-CT dated 30.07.2021 and Section 112 of the Finance Act, 2021 has been notified vide notification No. 16/2021-CT dated 01.06.2021. He added that there is a need for the Council to decide a date from which various other sections of the Finance Act will be notified. He suggested that 01.01.2022 may be fixed as the date with effect from which all other sections of Finance Act, 2021 (other than Section 123) will be notified. The Council agreed to this.

7.19. On the issues recommended by the Law Committee for the consideration of the GST Council, the Council took the following decisions:

- i. For the Agendas 3(i) to 3(xiv), the proposals as detailed in Agenda Note were approved. Agenda note 3(vii) approved with slight amendment as discussed in para 7.6 above.
- ii. For Agenda 3(xv), the Council decided to defer the same.
- iii. 01.01.2022 may be fixed as the date for notification of provisions of Sections 108, 109, and 113 to 122 of the Finance Act, 2021.

Agenda Item 4: Nominations from State Governments on Board of GSTN

8. The Secretary invited Joint Secretary (DoR) to present the agenda. JS, DoR stated that the Council was aware about the 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. Therefore, it was proposed to have a wider representation on the Board of GSTN. 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. Currently, there are 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 but no officer from State in Group-II. It was, 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. In the Officers' Meeting the previous day, State of Punjab suggested that in the first round of circulation as per alphabetical order, the States which were previously represented may be skipped.

8.1. The Hon'ble Member from Rajasthan suggested that in line with the suggestion from State of Punjab, the rotation in the Groups of States may happen in alphabetic order excluding those States which were previously represented. The Secretary stated that the aim behind this exercise was to ensure that every State gets represented since till now there was no proper method for nomination. The suggestions from States of Rajasthan and Punjab would be incorporated. Since the nomination was for a year, each State would be nominated again after a gap of 9 to 10 years.

Agenda 5: Performance report of the NAA (National Anti-Profiteering Authority) for the 1st quarter (April to June, 2021) for the information of the Council.

9. The Secretary presented the agenda for information of the Council which took note of the performance of the National Anti-Profiteering Authority for the 1st quarter (April to June, 2021) as tabled in terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017.

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

10. 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.

10.1. The details of the ad hoc exemption order issued are as follows:

Order No.	Date	Remarks
AEO No. 06 of 2021	03 rd 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).

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

Agenda Item 7: Report of Group of Ministers (GoM) on levy of Covid Cess on Pharma and Power in Sikkim

11. The Secretary introduced the agenda item and invited Ms. Shikha, Commissioner, Commercial Taxes (CCT), Karnataka to brief the Council on the report of the GoM. CCT, Karnataka stated that this

GoM was constituted on the request of the State of Sikkim to levy a cess of 1% on of the turnover of pharmaceutical sector (excluding the unorganised sector) and Rs. 0.1 per unit of power generated. Based on a judgement of Supreme Court and also on the previous precedent in case of Kerala which demanded for a similar levy of cess due to floods, the GoM decided that State of Sikkim may levy a cess of 1% on of the turnover of pharmaceutical sector (excluding the unorganised sector) restricted to only intra-State supplies. This is because of the reason that GST is a destination based taxation regime, cess cannot be levied by Sikkim on inter-State supplies. Regarding the second demand to levy cess on power generation, it was decided that since the subject matter does not fall within the purview of GST, this call may be taken by the State of Sikkim. Regarding the third issue of request by Sikkim for a special package of assistance by Government of India, it was noted by the GoM.

11.1. The Hon'ble Member from Delhi stated that he was a member of the GoM and clearly electricity was outside the purview. The majority view of the GoM was since GST worked on the principle of destination based tax regime on consumption, the proposal cannot be taken forward. Also, there was a view taken by the GoM that treating the request of Sikkim as a special case, the Central Government may be requested for a package or a special grant or assistance.

11.2. The Hon'ble Chairperson welcomed other Hon'ble members of the GoM to present their views before she invited the view from State of Sikkim.

11.3. The Hon'ble Member from Kerala stated that there were three recommendations made by the GoM. The members supported the arguments/demands of Sikkim. He added that levying cess on inter-State supplies would not help since the quantum of cess that can be raised by this is small. Levying cess on power generation might help to some extent. The unanimous recommendation by all members of the GoM was for some kind of help from Centre since they requested for only Rs 200-300 crores.

11.4. The Hon'ble Member from Goa stated that it was a genuine demand from a small State which finds it very difficult to meet the ends. 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 and rightly so. Everyone had faced this problem. His humble submission was that for small States, like Sikkim, Goa, Arunachal Pradesh, Manipur and other North Eastern States, slightly different treatment has to be given. In the past, tax holidays used to be given which is not the norm in the present day. He added that having passed through the Covid norms, they faced so much difficulty and in the light of a presentation on Compensation which would come to an end and options available after it would also be made in the current meeting, the Council should have a look at the plight of the smaller States. He further stated that they will not have enough money to even pay the salaries to their government employees.

11.5 The Chairperson stated that she appreciated the concerns of Goa and the fact that they were raising the concerns of the smaller States but the current agenda pertains to looking at recommendations of a GoM which was formed on the request of Sikkim. She invited if any other Hon'ble Member who was a part of GoM wanted to voice their opinions. She stated that she would listen to the issues raised by Goa but wanted to focus on the current agenda. She noted that the Convener of the GoM was not present and the officer from Karnataka have already given details about the report. In case, there is no other member of GoM who desired to voice their opinion, she would invite the State of Sikkim to respond to the report.

11.6. The Hon'ble Member from Sikkim offered his utmost gratitude to the Hon'ble Chairperson, all Hon'ble Members of the GoM and all officers concerned for taking pains to deliberate upon the submission placed by State of Sikkim for levying Covid Cess. They humbly accepted the three

recommendations of the GoM. Although the plight of economic slowdown caused by restriction imposed to control the pandemic was suffered universally, they live in a fragile topography having tiny market & economy where the impact of the disaster had proven very fatal. They are bounded by international borders on three sides that confines the scope of making efforts for economic revival. So they look upon the Central Government during this difficult time, with much hope and aspiration. The people of Sikkim and State Government have firm belief in the benevolence of the Central Government, he stated.

11.7. The Secretary stated that they had received a separate request from State of Sikkim as mentioned by Dy.CM, Delhi and Hon'ble Member from Goa which is being considered separately since the subject matter fell within the ambit of the Central Government and not the GST Council. A decision in that regard would be taken and they were appreciative of the sentiments of the GST Council and also the issues raised by State of Sikkim.

11.8. The Hon'ble Member from Manipur stated that while he fully supported the request of Sikkim, he would like to bring to the notice of the Council that there are five North Eastern States, namely Arunachal Pradesh, Manipur, Mizoram, Nagaland and Sikkim whose revenue gap was negative which meant that they were not entitled to receive compensation. This was one issue which he desired to raise earlier as well. The problem was that even though their revenue gap was negative, they were small States. They also faced the same problems as Sikkim due to COVID-19. He placed on record that out of these five States, Manipur, Mizoram, and Nagaland do not get any excise revenue since there was prohibition in these States. However, liquor is not banned in Sikkim. Despite that, they had financial problems. Therefore, these three States with prohibition have bigger financial problems since they do not get any revenue from sale of liquor. At the same time, out these three States, the revenue deficit grants, as per the XV Finance Commission, Manipur gets the least per capita. Manipur gets Rs 8,838, Nagaland gets Rs 23,027 and Mizoram gets Rs 16,317. He definitely supported the recommendations of the GoM including the recommendation of the special package by the Government of India to help Sikkim. He requested that a similar consideration may be given for a special package of assistance by Government of India so that they can meet their requirements and solve their problems. He stated that he would write a special request letter on behalf of State of Manipur on this issue.

11.9. The Secretary stated that this was not the subject matter related to GST but since the Hon'ble Member from Manipur had raised the issue, he assured that Government of India would take such special circumstances into consideration.

Agenda Item 8: Closure of Group of Ministers (GoM) on concessions/ exemption from GST to COVID relief material.

12. The Secretary introduced this agenda item and stated that 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 submitted its report in the 44th GST Council Meeting held on 12.06.2021, consequently the GoM has completed its mandate. Hence, agenda for closure of the GoM was placed before the GST Council. The Hon'ble member from Delhi enquired whether GoM would be closed down automatically after finalization of the report and submission of the report before the GST Council. The Secretary clarified that agenda for closure was brought before the Council for information as a matter of due procedure. The Council took the decision to discontinue the GoM on concessions/ exemption from GST to COVID relief material.

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

13. The Secretary invited the Hon'ble Member from Odisha, the convenor of GoM, on capacity-based taxation and special composition scheme for certain sectors to present the agenda before the Council. Hon'ble Member stated that at the outset he was thankful to the GST Council and in particular, Hon'ble Chairperson for giving him the opportunity to act as the convener of the GoM. This GoM was set up vide OM S-31011/12/2021-DIR(NC)-DOR dated 24th May 2021 based on the decision taken in the 42nd GST Council Meeting 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. He was thankful to the esteemed members of GoM who extended their full cooperation and that they took active part in deliberation while giving their valuable suggestions. He appreciated the effort made by JS, TRU as well as commissioners of member States for providing valuable inputs and assistance to GoM.

13.1 He stated that GoM was given three months' time to give its recommendations. Two meetings of GoM and one Officers' Meeting were held in the interim period. First meeting of GoM was held on 6th July 2021 where it was decided that a committee consisting of CCTs of member States and JS, TRU should go into the details and examine the issues while taking all the relevant factors into account like law, data and other relevant information and present possible options before the GoM so that it can deliberate further and take informed decisions. The officers met on 17th August 2021 and submitted their inputs to the GoM. The 2nd meeting of the GoM was held on 31st August 2021. He then had presented the interim report of the GoM. The recommendation of GoM were summarised as:

- (i) On brick kiln: Special Composition Scheme w.e.f. 1st April, 2022 for brick kiln wherein the threshold limit was recommended at 10 lakhs rupees and the GST rates of 5%/6% without ITC and 12% with ITC. 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.
- (ii) On Mentha Oil: Reverse Charge Mechanism on the first stage for mentha oil, as a measure to improve compliance. Further, 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 and the modalities for implementation of such changes may be worked out by the State of Uttar Pradesh.
- (iii) The GoM has at length discussed the feasibility of Capacity based levy on pan masala and tobacco products and 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.

13.2 The Hon'ble Deputy Chief Minister from Delhi had stated that he was grateful to the Convener to the GoM for personally taking keen interest and to JS, TRU for preparing the documents with facts

and figures to enable informed decisions. He stated that discussion has already been held on the issue. The issue of RCM on Mentha oil was very clear and special composition scheme for brick kilns was a good idea. More time was required to discuss at length of the issue of RCM on Pan Masala by the GoM for more deliberation.

13.3. The Secretary to the Council briefed the Council that a discussion had already taken place in Officers Meeting held on the previous day. He informed that no recommendation was there about Pan Masala and GoM sought three months' extension. On Brick Kilns a suggestion came regarding introduction of a Special Composition Scheme with GST rate of 6% without ITC & 12% with ITC and a threshold limit of Rs 10 lakhs. He further informed that this threshold limit of Rs 10 lakhs was a new category. However, there exists a category in services where threshold limit is Rs 20 lakhs with 6% GST rate. He sought suggestions from the Council on this as the Officers' view was that the threshold limit should be Rs. 20 lakhs.

13.4. The Hon'ble Member from Rajasthan had observed that 6% and 12% was higher rate and needed more deliberations as cost of construction in bricks, mining and stone crushing was very high. The time given to GoM should be extended further for more deliberations and the opinions from States should be invited since the issues vary from State to State. The threshold limit of Rs. 10 lakhs, was also too low. In his opinion, it should continue to be Rs 40 lakh. These decisions affect the brick kiln industry and employment of people. while higher rates may be applied on pan masala etc., the proposals regarding brick kiln, stone crushing and mining should be relooked at.

13.5. The Hon'ble Member from Uttar Pradesh expressed his gratitude for constitution of the GoM on the request from State of Uttar Pradesh. He also expressed gratitude towards Hon'ble Member from Odisha for going into the minute details to sort things out. He supported the proposal. During the VAT regime, their revenue was Rs 700 crores which reduced to Rs 170-180 crores in the GST regime. This was the sole reason behind his request for this GoM. He supported these recommendations since this would stop tax evasion. As far as the proposal regarding levying GST at 5%/6% without ITC was concerned, he requested the Council to take a decision in this regard. He emphatically supported the proposal for levying GST at 12% with ITC since it would reduce tax evasion and their revenue would rise up to Rs. 300 to Rs. 350 crores. Therefore, he requested the Council to pass the recommendations by consensus. On the issue of Pan Masala, the GoM requested for further three months of extension and with the due permission of the Hon'ble Chairperson this may be agreed upon. On the third issue of Mentha Oil, the State Govt. used to give refund (of nearly Rs 100 crores) but was not getting tax revenues, so he supported the recommendation of RCM.

13.6. The Hon'ble Member from West Bengal conveyed special regards from Hon'ble Finance Minister of West Bengal to the Hon'ble Chairperson since he could not attend the meeting while she appreciated the efforts of GoM in coming to a conclusion and giving suggestions before the Council equally, it has to be seen that the small tax payers are benefitted. She considered the recommendation of the GoM on Bricks Kilns as harsh and supports the view of Rajasthan to defer the decision on the brick kilns issue. Different thresholds for different categories can create confusion later on. The effective tax rate after utilization of ITC was around 1.5% to 2% but the GoM recommended 5% without ITC and 12% with ITC which will have serious impact on the sector. However, she supported other recommendations.

13.7. The Hon'ble Member from Kerala stated that State of Kerala was part of the GoM and supported the interim report of GoM. In the GST regime, they have seen reduction in revenue from stone crushing

industry and therefore they raised the issue. They would submit some proposals to the GoM on stone crushing industry later and they would support the interim report of the GoM as it is.

13.8. The Hon'ble Member from Tripura agreed with Hon'ble Member from UP for bringing the threshold for brick kilns to Rs 10 lakhs with a GST rate of 5%/6% without ITC and 12% with ITC. He felt that it would give more revenues for smaller State. He supported the recommendation of GoM as it would help in checking the tax evasion.

13.9. The Hon'ble Member from Manipur supported the recommendation of GoM as it would help in checking the tax evasion since there are numerous small brick kiln units which indulge in evasion. He further said that construction material business was very profitable. He supported the recommendation and emphasized on keeping the threshold limit to Rs 10 lakhs.

13.10. The Hon'ble Member from Assam fully agreed with the recommendation of GoM on special composition scheme in brick kiln sector with a GST rate of 6% without ITC and 12% with ITC. It will help the sector immensely and will foster tax compliance. The GoM had meticulously gone through both the items and she felt that GoM on capacity based taxation may also examine the feasibility of having a special composition scheme for works contract executed in Govt. departments. Such composition scheme was in existence in VAT regime.

13.11. The Chief Commissioner of State Tax from Gujarat submitted that the in the VAT regime they had lower threshold ranging from Rs 5 lakhs to 15 lakhs in different States. The Council took the judicious decision to first have threshold limit of Rs 20 lakhs and later raise it to Rs 40 lakhs. Due to the threshold limit, the governments were losing revenue. Perhaps, there was no study undertaken on how much revenue was lost on particular goods or service. Creating a new threshold for a particular category would set the regime back. First, there would be a new category created and there might be other goods or services where this categorization might be required. So, when a comprehensive study is undertaken and the Council thinks that the threshold limit needs to be brought down, then it can be examined as to threshold limits of which goods or services could be brought down. Else, it would be unfair that a commodity like brick which is used by everyone was subjected to extra tax burden. They agreed to the other recommendations.

13.12. The Hon'ble Member from Goa stated that the Hon'ble Member from Odisha as the convener of the GoM had done a good job. If avenues for revenue are foregone by not accepting interim report of GoM, then the opportunity for States to get additional revenue would be lost. On the one hand, it was said that compensation was going to come to an end and newer avenues have to be looked at and on the other hand, the members were cutting off the suggested new avenues. This would not augur well. In the past, the Council always decided in the better interests of the country and the same spirit should continue instead of myopic view with state specific issues. He requested everyone that the recommendations of the GoM may be agreed upon and taken to their logical conclusion.

13.13. The Hon'ble Member from Bihar supported for passing the GoM recommendation as it would stop tax evasion and help in revenue mobilization.

13.14. The Hon'ble Member from Punjab had stated that he had no problem with the decision of GST Council. However, he cautioned that GST was a tax on the supply of goods and services unlike the Central Excise which was on production. He has felt that the Council was stepping into territory of unconstitutionality by introducing the capacity based taxation on Pan Masala. He further added that Hon'ble Supreme Court had banned Gutka, Jarda etc. so the Council should not facilitate the production. He suggested that this may be taken up with the learned Attorney General or the Law Ministry to the

extent that it may be ultra vires to the Constitution. Hon'ble Member from Odisha clarified that Pan Masala was not banned by Supreme Court but the ban was on Pan Masala mixed with tobacco. Therefore, the report was not ultra vires to the Constitution. Further it was the interim report and the final report on pan masala has not been submitted yet.

13.15. The Hon'ble Member from Arunachal Pradesh told that Pan Masala production boosts rural economy and North East States are increasing the cultivation of supari and arecanut. The GoM was yet to make recommendations on pan masala. The other recommendations are logical and he supported them.

13.16. The Official from Haryana stated that there were two types of apprehensions about tax burden and the threshold limit of Rs 10 lakhs as far as brick kilns were concerned. The same composition scheme existed on brick in VAT regime in Haryana and the current revenues from brick kilns under GST was far less as compared to the VAT regime. He was sure about Haryana that if the same dispensation was entered into, the tax burden would not be more than the previous regime. State of Haryana was part of the GoM and the GoM has taken a conscious decision since the value of goods in brick kiln industry was less and reduction in threshold limit was required. Whether other goods or services also required such a scheme may be debated upon by the Council.

13.17. The Hon'ble Member from Uttar Pradesh stated that the GoM has unanimously submitted the recommendations. The legal issue regarding pan masala and gutka was clarified by Hon'ble Member from Odisha. The common man would not be burdened by these recommendations. Hence he requested that these recommendations may be agreed upon.

13.18. The Hon'ble Member from Rajasthan observed that the GDP growth of the country was under pressure. On the one hand, there was a lot of pressure from the construction industry for concessions to boost the sector and on the other, the tax rate was being increased (5%/6% without ITC and 12% with ITC). He could not understand as to how evasion would be curbed by increasing the tax rate or by reducing the threshold from Rs 40 lakhs to Rs 10 lakhs since the mechanism for curbing evasion were different like increasing the transparency of the IT system etc. Due to the Covid pandemic, the real estate sector was under pressure and there was also the issue of reduction in revenue of the States due to discontinuance of compensation. He agreed that this step would increase some revenue but they have to look from the point of view of employment and GDP growth as well.

13.19. The Revenue Secretary stated that brick kilns are present in every State. His experience goes hand in hand with the inputs from the combined experience in the Council which was that bricks are removed from the kiln at such values which would tally to be just below the prescribed turnover. As there is huge evasion in this sector, the GoM had lengthy discussions on how to extract valuable revenue from this vital sector. Some members also stated that a small portion of revenues were collected presently as compared to the previous years. He agreed that while concessions may be given to the deserving, it was also important that a message is sent that strict measures would be undertaken where there is evasion. He suggested that the Council might go ahead with 6% without ITC and 12% with ITC while increasing the threshold from Rs 10 lakhs to Rs 20 lakhs. The effects may be studied and the Council can decide on the issue.

13.20. The Secretary submitted to the Council for conclusion of the discussion that there was lot of evasion in this sector and proposed that with 6% or 12% GST rates, the Rs 20 lakhs threshold limit may be considered. He added that threshold of Rs 20 lakhs was applicable to services at present. The Council

may come back on the issue in later meetings. He requested that since the recommendation of GoM was unanimous, the Council may also decide on this issue unanimously.

13.21. The Hon'ble Member from Uttar Pradesh also requested that Council may consider the proposal with increase the threshold from Rs 10 lakhs to Rs 20 lakhs.

13.22. The Hon'ble Member from Delhi also requested to approve the proposal with Rs. 20 lakhs threshold limit which was practical.

13.23. The Hon'ble Member from Rajasthan stated that he had no issue with the rates but the threshold must be increased further from Rs 20 lakhs. This would help many people. He further added that GoM should consult more states and should seek suggestions from the other states who were not members of GoM so that broad and fruitful discussion can happen.

13.24. The Hon'ble Member from Delhi stated that the GoM had deliberated a lot on various data points to arrive at the Rs 10 lakh threshold limit. He agreed that there was a huge evasion in this sector. Personally, he would want the threshold limit to be at Rs 10 lakh. But considering the fact that there was already a threshold limit of Rs 20 lakhs in services, a threshold limit of Rs 20 lakhs may be agreed upon.

13.25. The Hon'ble Member from Madhya Pradesh stated that the proposal of increasing the threshold limit from Rs 10 lakhs to Rs 20 lakhs by the Secretary should be approved unanimously.

13.26. The Hon'ble Member from Odisha stated that it was the era of bricks made from industrial waste. Factories manufacturing these are becoming more common. Bricks made from clay have gone down and the industrial waste bricks are used everywhere. The brick kilns in Bihar, Haryana, Madhya Pradesh and Uttar Pradesh are very small, scattered and unorganized. Therefore, the GoM proposed the threshold limit of Rs 10 lakhs. He believed that the brick kiln industry might vanish soon and therefore the Council has to take this decision carefully.

13.27. The Hon'ble Member from Rajasthan stated that the argument that bricks from clay are vanishing may not be correct. At least one crores bricks are made from each kiln in a year. There may be places which had banned clay brick kilns and consequently bricks from ash and other waste products are produced.

13.28. The Secretary proposed that GoM Recommendation may be accepted with revised threshold of Rs 20 lakh. This would come into effect from 1.4.2022, as recommended by the GoM. On Mentha oil there was general agreement to the recommendation of the GoM. Accordingly, Council may agree to recommendation of GoM on mentha oil

13.29. The GST Council approved the recommendation of the GoM on bricks with a threshold limit of Rs 20 lakhs and GST rate of 6% without ITC and 12% with ITC (to come into effect from 1.4.2022).

13.30. Also, the GST Council approved the recommendation of the GoM on the Mentha oil at the first stage. Further, IGST refund route would be closed for mentha oil as and when Section 16 of the IGST Act comes into effect.

13.31. The GST Council also accepted the extension of the tenure of GoM for three months for deliberations relating to capacity based taxation on Pan Masala.

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

14. The Secretary introduced the agenda item and stated that GST rates for different items are notified by specifying the HSN (Harmonised System Nomenclature) code. The GST rate notifications utilize the HSN codes listed in the Customs Tariff. 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. Therefore, 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. 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. This was a technical exercise and for the present cycle of changes, needs to be completed before 1st January, 2022. The agenda was placed before the GST Council for approval.

14.1. The Hon'ble Member from Delhi stated that since the HSN codes change internationally every five years or so, he thought that it was not necessary for this to come up before the Council for approval. This may be granted auto-approval and need not be put before the GST Council in future. JS, TRU responded that Hon'ble Member from Delhi was correct and this was just a technical change that which was brought for information and to prevent any possible confusion as to why the entry was changed in the notifications.

14.2. The Council approved the agenda on transposition of GST rate notifications consequent to changes in tariff item codes in the First Schedule to the Customs Tariff Act, 1975.

Agenda Item No 11: GST rate on job work services in relation to manufacture of alcoholic liquor for human consumption

15. The Secretary introduced Agenda Item 11. He stated that contract manufactures, manufacture liquor for brand owners on job work basis. The Agenda concerns the issue whether manufacture of liquor on job work basis is eligible for concessional GST rate of 5% prescribed for job work in relation to food and food products. He further stated that there was in principle agreement during the Officers meeting that GST on job work is not a tax on liquor, and that this did not infringe on the taxation rights of the States. The impact of this change may be minuscule, as this is not a tax on liquor or any of its components but on the job work involved in its manufacture.

15.1 The Official from Maharashtra stated that with an increase in tax on alcoholic liquor, the room for States to impose taxes on liquor shrinks and Maharashtra was opposed to the extent of taxation, and not the principle of taxation, as it harms their ability to raise resources. The Secretary stated that charging 5% rate on manufacture of alcoholic liquor on job work basis does not send a good signal considering standard rate of tax is 18%.

15.2. The Hon'ble Member from Punjab stated that the issue was one of principle and not of the magnitude of impact. Barring GST, the Constitution does not allow for concurrent taxation, and this particular tax was a transgression on the domain of the States. He also stated that he was aware of the Delhi High Court Judgment, and as the case is in the Supreme Court the Council should not take a call on an issue which was sub-judice. He then stated that one of objectives of GST was to abolish multiple levies, and by going for multiple levies again the rules of GST would be breached. The Secretary clarified that no rules of GST were being flouted, and the issue at hand was whether 5% or 18% rate of taxation should be imposed on Job Work. The Official from Punjab stated that when the negative list of services was drafted in 2012, all states were opposed to imposition of service tax on job work on alcohol, and thus it was placed in the negative list. The Central government recognised that there cannot be service tax on job work in relation to manufacture of alcohol. However, in 2015, Centre introduced service tax on such job work. The 'aspect theory' propounded by the Supreme Court justified parallel levies on the basis of the levies being made on different aspects. He added that Delhi High Court rationalised levy of service tax on job work in relation to manufacture of alcohol, and now the matter is before the Supreme Court to decide if job work amounted to manufacture and whether a tax was being imposed in the domain of the States. He then stated that as states will continue to impose excise on the same job work for liquor, there will be a situation where two levies will be getting imposed on job work. This kind of double levy has never been imposed.

15.3. The Hon'ble Member from Kerala stated that such a tax is an intrusion on the rights of the States. He stated that in the last meeting of GST council, there was an agenda item on alcohol for human consumption, and that the Council had unanimously decided that the issue should not be approved. He stated that similarly, it would not be proper to include the levy of GST on job work for liquor as the issue was not just about percentage of tax but imposition of the tax itself was an intrusion on the powers of the States.

15.4. The Hon'ble Member from Odisha stated that this was a unique case and is not the case as has been explained by the state of Punjab that some employers are outsourcing the employees. The decision has to be taken as to whether alcohol is food or not and, it has to be taxed accordingly.

15.5. The Hon'ble Chairperson requested the members to consider the arguments made by the Hon'ble Member from Odisha. She stated that there was value addition which was going untaxed which neither benefitted the Centre nor the States.

15.6. The Hon'ble Member from Odisha stated that in this case, an individual sets up a bottling plant and gives it on lease to a large liquor company. The amount which was paid by the company to the individual who has set up the bottling plant was the amount for service which was not being added to the cost of liquor and stated that there was no case of double taxation here. He then stated that as service was being given by bottling plant to company, it was not a case of outsourcing as well.

15.7. The Official from Tamil Nadu stated that the issue was one of principle and if a service was rendered, and there is a plant which manufactures liquor, and a tax is tagged on job work/service, then the tax levied builds into the basic price since there is no ITC available for payment of state excise imposed on it. The final sale price of liquor reflects this add-on tax. He added that this impinges on the taxation space of the State government. He suggested that this tax should be left as it is, and that if there was any differential capacity of the State to tax, then the State government could use the differential capacity to levy excise.

15.8. The Secretary stated that the contention of the Official from Tamil Nadu is that nothing should be taxed where GST is not there. Thus, this shall apply to petroleum, electricity, etc. which may not be an acceptable principle.

15.9. The Official from Maharashtra stated that he agreed with the principle of inclusion of Job work under GST, but stated that tax should not be raised to 18%. As fiscal space of the States was limited, an increase in the rate limits their space to raise resources. He requested that the rate should be kept at 5%, and referred to the analogy of the transport sector, where the GST rate was kept at 5% considering that petrol and diesel were under VAT and ITC could not be passed on. Based on this analogy, the tax on job work for liquor should also be kept at 5%. The officer from Maharashtra mentioned that the Hon'ble Member from Maharashtra could not attend this Council meeting due to some unavoidable preoccupations and submitted that the Hon'ble Member has given his written comments on some agendas and requested that these comments may be included in the minutes and circulated in the meeting for information of the Council. The Chairperson gave her consent and the written comments of Hon'ble Member from Maharashtra were circulated. View of the State of Maharashtra on this agenda was that, "This issue was discussed in the 39th GST Council meeting in which Maharashtra and Tamil Nadu opined that 5% tax rate should be for job work services to the manufacturing of liquor for human consumption. Since, liquor is not taxed under GST, Input Tax Credit is not available to the liquor manufacturers, which leads to increase in production cost. Therefore, Maharashtra is of the opinion the Services by way of job work in relation to manufacture of alcoholic liquor for human consumption should be taxed at 5%".

15.10. Hon'ble Member from Uttar Pradesh stated that as liquor was not a food product, it should attract 18% rate.

15.11. The Hon'ble Member from Delhi also stated that the rate should be 18%. He stated that no new tax was being imposed, and that the value of job work was small and hence the tax amount was minuscule as compared to the final cost of liquor.

15.12. The Hon'ble Member from West Bengal stated that the tax should remain at 5%. She stated increase in tax would infringe the rights of the States. She then stated that the entire issue is being examined by the Supreme Court and thus a decision on this issue could wait.

15.13. The Secretary stated that West Bengal was already charging 18% on the job work by treating liquor as a non- food product, and that the Centre was proposing to adopt the practice from West Bengal and Odisha and extending it to all the States. The Secretary clarified that the issue was not sub-judice, but rather the Supreme Court had referred the matter to the Council to decide if it was a food item or not.

15.14. The Hon'ble Member from Bihar stated that if liquor is considered as food then there would be need to redefine food items. He stated that he could not understand how alcohol could be food item.

15.15. The Hon'ble Chairperson asked the Council to focus on the issue under discussion and stated that this matter was not before the Court, and that the Council was to take a decision on the issue.

15.16. The Official from Tamil Nadu stated that they would want Job work to continue to be taxed at 5%, and if needed, a special rate could be notified.

15.17. JS, TRU clarified that the issue was whether liquor should be treated as food item or not, and that the understanding was that it should not be treated as a food item. Once such a decision is taken, it will go outside the 5% category.

15.18. The Secretary stated that the Council should decide the issue in principle, and not see if some small benefit accrues to someone. He then stated that the issue was whether liquor was a food item or not, and the Council should also keep in view the optics of the decision. He then stated that the Council should accept that alcoholic liquor is not a food item, and the job work in relation to manufacture of the same should be taxed at the standard rate. The Council eventually agreed to the view that alcoholic liquor would not fall under that category of food item and job work in relation to it would attract GST at the rate of 18%.

Agenda 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-

16. The Secretary stated that this agenda is arising out of an order of Hon'ble Kerala High Court in the W.P. (Civil) No. 12481 of 2021 for placing a representation by Kerala Pradesh Gandhi Darshanavedhi, Thiruvananthapuram regarding inclusion of Petrol and Diesel under GST. He stated that this agenda is being placed before the Council along with the said representation as per directions of the Hon'ble Court for taking a decision.

16.1. The Hon'ble Chairperson stated that there have been media reports on this matter and the Council has to deliberate on the issue as a common body. She clarified that this agenda is being presented before the Council for discussion because of order of the Hon'ble High Court of Kerala.

16.2. As per circulated written comments of the Hon'ble Member from Maharashtra, with reference to this agenda, view of the State of Maharashtra is that, "Under GST, State's ability to raise additional financial resources is limited. However, in cooperative federalism, State's require additional resources and finances for taking up developmental activities and to accelerate growth of the State's economy. As petrol, diesel and other petroleum products have major contribution to the State Exchequer, hence these Petroleum products be continued out of GST as per existing tax structure."

16.3. The Hon'ble Member from Delhi stated that even earlier he had requested before the Council and written letters to Hon'ble Members that a considered view on the issue of inclusion of petroleum products under GST is required to be taken. He believed that petroleum products should be brought under GST for which, a bold decision will be required to be taken. He presented a calculation based on the current ratio of VAT/Central excise tax component in retail value of one litre of Petrol in Delhi and stated that if Petrol is brought under the ambit of GST, then GST at the rate of 125% will have to be imposed keeping the price at current level and this GST rate slab is currently not there. Further, to prevent arbitrage of tax by purchase from one state instead of another and to implement truly the one nation and one tax concept, a new tax slab will have to be created which may require amendment in the Act or any other way as may be suggested by the Law Committee. However, this will have to be done sooner or later in the interest of the consumers.

16.4. The Hon'ble Member from Rajasthan stated that on Diesel and Petrol, the Basic Excise duty is Rs. 1.80 per litre which is shared by both the Centre and the State. Special Excise Duty is Rs. 8 Per Litre and Additional Excise Duty by the name of Road and Infrastructure Cess is Rs. 18 per litre where States do not get any share. So, while States have a share in Basic Excise Duty, it is kept on lower side and where States do not get share in Special Excise Duty and Cess, they are being kept on higher side.

He stated that share of Central Government taxes on per litre Petrol and Diesel is much more as compared to the share of State government taxes. He further stated that even though this agenda is being discussed as per Hon'ble Court's direction and has not been brought up by either Centre or States, it is not the right time to consider it. Even if this is to be considered, first it should be ascertained that if these items are brought under the ambit of GST, what will be the burden on the revenue exchequer of states and hundred percent reimbursement to states should be given similar to Compensation scheme.

16.5. The Hon'ble Member from Kerala stated that as per Court's orders, the decision of the Council is to be informed to the Hon'ble High Court within six weeks of the order. So, as a policy decision, the reply is to be furnished to the Hon'ble Court. The Secretary stated that the matter requires larger deliberations and has heavy repercussions on the exchequer which will be difficult during the Covid pandemic times.

16.6. The Council, taking into account the discussions, was of the view that this is not the right time to bring Petrol and Diesel within the ambit of GST.

Agenda No. 13 - Concessions to Specified drugs used in COVID-19 treatment till 31st December, 2021

17. The Secretary stated that in the 44th Meeting of the GST Council held on 12th June, 2021, the GST rate reduction was recommended till 30th September, 2021 on certain items used in COVID-19 treatment along with the four medicines namely Amphotericin B, Tocilizumab, Remdesivir and anti-coagulants like Heparin. He informed that extensive consultations have been held with the Ministry of Health and Family Welfare and Department of Pharmaceuticals. Ministry has recommended for extending the tax reduction benefits on these four medicines till 31st December, 2021. Besides that, it has also been recommended to reduce GST from 12% to 5% on seven other drugs till 31st December, 2021 [as mentioned in para 4 (b) of the agenda]. He submitted that if Council agrees, concession to these seven drugs till 31st December, 2021. The Ministry of Health and Family Welfare and Department of Pharmaceuticals have informed that there are also efforts to develop these drugs within the country.

17.1. The Hon'ble Member from Bihar stated that proposed tax reductions on specified medicines/drugs may be extended till March, 2022 as States are gearing up for any possible third wave of COVID. Secondly, States have received COVID-19 emergency response packages which is for the duration till March, 2022. Accordingly, he requested that in order to boost the health sector and make proper preparations to combat any COVID-19 surge, the concessions on these medicines may be extended till March, 2022.

17.2. The Revenue Secretary stated that in 43rd meeting of the Council, it was decided that a review will be done before September and if recommended by the Health Ministry, the tax concession will be extended. Accordingly, he proposed for extending the concession on above specified medicines including the new seven medicines till December, 2021, and to review the position again in December, 2021.

17.3. The Hon'ble Member from Bihar further stated that it is requested that not only on these medicines but tax reduction announced earlier on other COVID-19 related items and equipment like ambulance, oxygen concentrator and hand sanitizer etc. should also be extended to effectively combat the situation if any third wave of COVID happens.

17.4. The Revenue Secretary stated that when tax reduction on COVID related items was announced in the previous meeting, demand of these items was very high in the market. Now, most of the items

like Oxygen Concentrators etc. are being made in the country itself. He stated that in case any such need is felt to further extend the current position of tax rates on Covid related items, we may take the delegation from the Council that the same can be done with approval of Hon'ble FM/ Fitment Committee, however, at present the domestic industry should be encouraged.

17.5. Hon'ble Chairperson observed that the tax reduction on these medicines can be made till 31st December, 2021 and the position can be reviewed before next meeting and a decision can be taken accordingly as to whether any further extension is required beyond 31st December, 2021.

17.6. The Secretary clarified that the tax reduction till 31st December, 2021 will be applicable only on specified medicines as mentioned in the agenda and not on instruments/equipment as second wave of COVID is under control except for some cases in Kerala. Position would be reviewed in December, 2021.

17.7. The Council approved the proposal.

Agenda item 14: Issue recommended by the Fitment Committee for the consideration of the GST Council.

18. The Secretary introduced the Agenda Item 14 to the Council and asked the Joint Secretary, TRU (Co-Convener of the Fitment Committee) to present the agenda before the Council. JS (TRU) elaborated on various Annexure contained in the agenda, i.e., items where change in rate in goods has been suggested by the Fitment Committee, goods in respect of which no change has been suggested and goods in respect of which Committee felt that further discussion required, hence deferred. Similarly, annexures w.r.t services were also explained in detail by JS (TRU).

18.1. The Hon'ble Member from Madhya Pradesh referred to the issue of removing inverted duty structure from Copper Concentrates and other Ore concentrates and opined that increasing the GST rate from 5 % to 12% may be appropriate. However, if the rates are revised to 18%, then it shall lead to increase in prices. He also stated that it would be more appropriate to keep both the corrugated boxes and non-corrugated boxes at a uniform rate of 12% rather than the proposed higher uniform rate of 18%. Regarding polyurethane scrap, the rate of 5 % should be maintained and to check tax evasion, the enforcement mechanism should be strengthened. Regarding pens, he suggested that a uniform rate of 12% should be kept on all types of pens, parts and components of writing instruments rather than the proposed higher rate of 18%. He suggested that goods falling under chapter 49 such as plan and designs, cheque forms, printed cards, etc. and the printing services pertaining to them should be taxed at uniform rate of 12%. The GST rate on Biodegradable bags and their inputs should be kept at 5 %. Regarding the e-commerce operators pertaining to supply of food items, he stated that it would be appropriate to cover only unregistered food suppliers. Further, the issue of eligibility of ITC on such transactions needs to be deliberated upon.

18.2. The Hon'ble Member from Punjab stated that the GST Council is in a position to change the destiny of India. He stated that the Council should benchmark itself, not to the past, but to the future and there was a need to take a holistic view of the GST rates, the number of slabs and the number of exemptions. He proposed that the Council should hold in the next six months, a special meeting on fitment issues, as there were 91 proposals on goods alone, of which 49 were rejected, and 10 deferred. He then stated that of the 32 which were taken up, some of them were of clarificatory nature. He stated that by giving exemptions, people would clamour for more and more exemptions. He stated that the import of scrap is of such magnitude that potential revenue from this source could not be foregone and suggested that a meeting with the Industry could be held, and that scrap could be moved under the RCM

mechanism. This would lead to eradication of huge amount of bogus billing. He stated that the pros and cons could be weighed, and in the next meeting, a decision could be taken.

18.3. The Hon'ble Chairperson stated that this issue could be taken up at the next meeting after due consultation.

18.4. The Secretary referred to the issue of Zolgensma and Viltepso medicines for personal use, which are used for muscular atrophy and stated that these medicines were being exempted. There were a few more medicines used for the same disease. He stated that this medicine was for Rs 16 Cr., and there is two crores duty on it. He then stated that the proposal was that these medicines should be made exempt, and then requested the Council to delegate the power to provide similar relief for any other medicine which is used to exclusively treat this disease.

18.5. The Hon'ble Chairperson stated that medicines for a life threatening and rare illnesses, like muscular atrophy, and for those where the cost of one dose is in crores of rupees, tax on the same also runs into lakhs, arranging funds becomes impossible for patients. She stated that the Government of India were in consultation with the pharmaceutical sector, for a list of those medicines where such requests to waive tax would keep coming once in a while. She stated that in all such cases, giving exemption on a case to case basis may lead to jeopardy to a patient's life if there is some delay in signing the exemption. She then stated that the Council should take a broader list of such medicines and give exemption.

18.6. The Revenue Secretary referred to the proposal to increase GST rate on Copper and other metal concentrates to 18% from 5%. He stated that the rate on all essential commodities should be kept at 5%, and that for most other items, the rate should be kept at 18%, which is the standard rate under GST, and that the Council should strive to bring the rate on most items to 18%. He stated that very little revenue is realized at 12% rate. He stated that Madhya Pradesh has requested that ores rate should be at 12%. He further stated that this item was discussed in the Officers meeting, and that this is pass through, and it would be advisable if the rate on Ore and its concentrates is also made 18% considering that the metals are also at 18%. This would resolve the issue of inversion in GST rates on ores.

18.7. The Secretary referred to item at S.No. 8 [Annexure-I to the Agenda i.e. coconut oil. He stated that coconut oil is available at 5%, and that the proposal is to take it to 18% for small bottles. He then stated that a particular company was labelling their oil as pure coconut oil, and selling it in small bottles, and that this oil was not being used for cooking, but rather was being used for cosmetic purposes. He stated that as all cosmetics are at 18%, so the coconut oil used for hair oil should be at 18%. He then stated that if the rate is increased to 18%, the consumption of coconut oil would not fall. He stated that the question was whether the size of bottles which should be charged at 18% rate should be one litre or less.

18.8. Hon'ble Member from Kerala stated that in Kerala the major edible oil is coconut oil, and that production wise, the majority of farmers are engaged in Coconut farming. He stated that Member from Tamil Nadu raised the same issue in the letter he circulated. He stated that if coconut oil is being singled out, this would affect the farmers as well the price. He stated that the majority of farmers and MSMEs also produce coconut oil. He stated that maximum oil is coming from Kerala. He stated that the industry will be affected. He stated that a lot of other edible oils are used for cosmetic purposes, like Olive oil and Mustard oil and that if coconut oil is singled out, it would affect the State economy.

18.9. The Hon'ble Chairperson stated that while purchasing coconut oil for edible purposes, one would not buy a small bottle, but rather would buy in larger quantities, at least 250 ml. The evasion or

avoidance happens when smaller bottle sold for cosmetics purposes is classified as pure oil and hence chargeable GST @ 5%. She stated that mustard oil is not being sold in smaller sachets for cosmetic purposes, and only Olive oil and Coconut oil come under the category of oils which can be used for both cosmetic and edible purposes. She stated that she wanted to highlight that it is not that coconut was being singled out but rather that coconut oil is so versatile that it can be used for both purposes. She then stated that she wanted to apply this logic, and see if a middle ground can be found.

18.10. The Hon'ble Member from Kerala stated that Kerala has a public sector enterprise in Kerala, called Kera, which makes 250 gm sachets for edible purposes, and that Kera was the main producer of Coconut oil.

18.11. The Hon'ble Member from Rajasthan agreed with the Hon'ble Member from Kerala, and that the threshold for determining whether oil is for edible purposes or cosmetic purposes should be kept at 200-300 ml., instead of 1 Litre. He stated that every type of oil can be used for any purpose. He stated that even mustard oil is used as hair oil in rural areas. He stated that even Olive oil is used for multiple uses. He then stated that the major profession in the southern region is based on Coconut oil, so the 1 Kg limit should be reduced to 250-300 ml.

18.12. The Hon'ble Member from West Bengal stated that the onus should be given to the manufacturers to label the product as edible or non-edible. Hon'ble Chairperson stated that from her personal experience that there may be brands which do not label oil for particular purpose, as the manufacturer would not know for what purpose the consumer will use the oil and that the issue is complex. Hon'ble Member from West Bengal stated that even sachets can be used for cooking, and questioned that if segregation is made only in respect of packaging, whether it would lead to any benefit. Hon'ble Member from Rajasthan stated that the packaging costs of smaller packages would be prohibitively high, and it would reduce the margin of the manufacturer. Hon'ble Member from Goa stated that for the first time the coconut sector is looking up, and just because one company managed to package the product so well that it can be used as a hair oil, it should not be singled out. He then stated that sustained campaigns of multinationals tried to put forth to people that coconut oil is not good for hair at all, and that it could be harmful. Those multinationals are using coconut oil to make their products now. He added that because of one single industry, the entire coconut plantation farmers should not be made to suffer and that this would be a retrograde step.

18.13. Hon'ble Member from Puducherry stated that if lower quantity items are charged at 18%, the common man will get affected. He stated that moreover, non-branded items are also sent to the market, and it would lead to a lot of misclassifications. He stated that lakhs of people buy coconut oil in the lowest volume, and by charging them more, the poor section of people shall get affected. He stated those who are poor are purchasing the lower quantity items, and are purchasing more often. So every time, they will have to pay GST at 18%.

18.14 Secretary stated that if one goes and buys 100 and 200 ml coconut oil without packaging, then that person will only be charged 5%, so the poor man would not be affected, and only bottled ones will be affected. He stated that the quantity threshold may be reduced to 500 ml. He further stated that people would not buy 500 ml in a bottle for edible purposes, and will only buy it for cosmetic purposes. He further stated that the production of coconut or the sale of coconut will not go down, as the demand for the oil is there, and that it was only the manufacturers who were using it to have a lower tax. Hon'ble Member from West Bengal asked if such a classification would lead to litigation as there was a difference being created between edible oils, and that it had to be examined if there was an intelligible difference.

18.15. The Hon'ble Member from Kerala stated that some more time could be taken, and a study could be done, as this was an agrarian issue. He stated that Kerala had decided to exempt all plantation taxes, as the sector was facing a financial crisis. He further stated that taxes were being exempted, and many other freebies were being given to farmers, and charging a higher rate would be affecting farmers. Hon'ble Member from Delhi stated that proposal is not to levy a new tax. He stated that the Council may decide that oil which is being used for cosmetic purposes should be allowed to be charged at 18%. He stated that 18% should be charged below a 500ml limit.

18.16. The Hon'ble Chairperson stated there was some complexity to this issue. She stated that the Deputy Chief Minister of Delhi was absolutely right as one is able to differentiate between what is edible and what is cosmetic. In the case of Coconut oil, this differentiation is not clear, and she proposed that the Council should go by the suggestion of the Hon'ble Member Kerala and study the issue further, and that it should not be taken up this time.

18.17. The Secretary referred to Item at serial number 20, Paper sacks and corrugated boxes. He stated that the Hon'ble Member from Madhya Pradesh had stated that the rate be retained at 12%, as 18% would increase the rate of the user manufacturer. He further stated that in the officers meeting Odisha had strongly supported that the rate should be 18%. He further stated that this was a packaging material which is an intermediate good, and it would not raise the cost as mostly it would pass through, and in cases it is not, it would give certain revenue. He stated that the standard rate should be 18% and if Hon'ble Member from Madhya Pradesh agree to 18%, and no other Hon'ble Member had an issue, then Council may agree to this proposal.

18.18. The Secretary referred to item at Serial Number 32, i.e., Spiced water. He stated that all States in the officers meeting were of the opinion that this should be kept at 28%, otherwise, it may also become another avenue for misuse by classifying many products as spice water, as the definition was not clear. He then stated that the fitment committee had not given a decision on this issue and a decision was being asked for from the Council.

18.19. The Secretary referred to item at Serial Number 2 [Annexure-II] on Scrap. He stated that Hon'ble Member from Punjab had already opined that it should be reduced to 5%. He stated that the value of import is of Rs. 40,000-45,000 crores, and if it is reduced to 5%, then this revenue would be lost. He then stated that engagement with the Industry could be done, first at the official level, and then at the political level.

18.20. The Secretary referred to item at Serial Number 23, Biodegradable garbage bags. He then asked JS, TRU to explain this issue. JS, TRU stated that these bags currently attract 12%, but Madhya Pradesh was of the view that this be reduced to 5%. The fitment committee was of the view that the rate on this item should not be reduced as it would create the problem of inverted duty structure. The inputs, polymer etc. are all at 18%. He stated that a suggestion was given at the Officers meeting, and has been reiterated by the Hon'ble Member that biodegradable bags can remain where they are, but input can be reduced, so that input cost comes down. This would only shift inverted rate structure to previous stages in supply chain. He stated that it was agreed at the Officers meeting these bags should be incentivized through means other than the GST route, as this was harmful.

18.21. The Secretary referred to item at Serial Number 44 on Polished Napa Stones. The official from Andhra Pradesh stated that Hon'ble Member from Andhra Pradesh had given a representation that as per the HSN code, limestone and other calcareous materials were provided under Heading 2515120 and Marble and Travertine were provided under 25151210, except 2515. He then stated limestone is very

cheap material, and a slab is priced at rupees 9 per sqft. He then stated that even after slight polishing, mirroring cannot be done on it. He then stated that the rates applicable are not of 18%, and are 5% only, and this requires examination. JS TRU clarified that this issue was discussed in fitment, and could further be taken up by the Fitment committee if additional inputs/information is provided by the State.

18.22. JS, TRU referred to item at Serial No 7 and S. No. 25 in Annexure-IV. He stated that these were related to services provided to government, governmental authorities, government entities, panchayats and other local authorities. He stated that Officers were agreeable to the recommendations of fitment in the Officers meeting on exclusion of governmental authorities and Government entities from these exemptions as well as pruning the concerned exemption with regard to the scope of these entries. This proposal entails significant changes. As regards scope of entries, he stated that these exemptions have become wide and are inviting multiple litigations on their interpretations and scope. The exemption on pure services/composite supplies provided to any of these bodies in relation to functions entrusted to these bodies by the Constitution, was being claimed by various organizations to which these exemptions are not intended, including various hospitals, institutes and other authorities and all kind of input service to these bodies are being claimed as exempted under these entries even if there is no direct nexus to discharge of constitutional function. Accordingly, Fitment Committee has made two suggestions, one to exclude the Governmental entities and Governmental Authorities from the ambit of exemption, and two, the services which need to be exempted, when provided to Central Government, State Government and local authorities under these exemptions, must be specially enlisted. He further stated that a list has been provided in the Agenda note. He stated that the recommended changes are proposed to be implemented from 1st January 2022, so that refinement can be done in the specific list of exemption being proposed, and that this would be a positive list approach, instead of having a very wide and generic entry.

18.23. The Hon'ble Member from Delhi stated, as regards list of exempted services being proposed, that this was a complicated issue, and there could be further elaboration of it. He asked if a municipal corporation hires an agency for cleaning, which is an enlisted service, then will such a service be exempt. He then gave the example of education, and asked if the education department is hiring a service for this function, in two cases, one in primary education, which is a local body function, and then secondary education, which is a State government function, will such a service be exempt or not. JS-TRU clarified that these will be exempt under different categories, and stated that education itself is exempt. He stated if the municipal bodies were hiring some services for cleaning or for sanitation, then such services will be exempt. He stated that the issue was however that the notification is being interpreted even to avail exemption to computer maintenance, manpower supply for security services, etc. and that exemptions on inputs services is being claimed even if provided to say educational institutes, ports or such other bodies (which is not the intention). He stated that the list says that sanitation related services, education related services, even transport related services for local authorities would also be exempt, but exemption entry does not include broader services such as manpower, or computer maintenance or security services.

18.24. The Hon'ble Member from Rajasthan stated that local bodies give a contract for the cleaning of the entire city, for example, a 200 crores contract for the cleaning of the entire city. He asked if such a contract would be liable to GST. JS, TRU stated that the implementation of the provision would be from 1st January, 2022 before which the issues involved as regards scope of exemption, as recommended by Fitment Committee, may be sorted out, and further stated that sub-contracting would be exempted, but individual services such as financial services or security would not be.

18.25. The Hon'ble Member from Rajasthan stated that local bodies are given contracts on turn-key basis, which includes all works including waste collection to waste plants to STP. He then opined that the provisions should be clarified, otherwise it would lead to a lot of confusion.

18.26. The Secretary referred to the list of services sought to be exempted under the provisions, listed at S.No. 25, Annexure 4.

18.27. The Hon'ble Member from Rajasthan stated that the scope of the activities enumerated is so large, that it would need to be clarified, otherwise a lot of people would fall outside the revenue and taxation limits. He further stated that the scope of activities would need to be defined. He then gave the example of healthcare and sanitation which has a very wide scope and would need clarification.

18.28. The Officer from Tamil Nadu stated that similar to the point that Hon'ble Member from Rajasthan was making, clarity on these issues, such as in case of healthcare, where manpower is outsourced under healthcare. Then under municipal services, sanitation is specified, solid waste management is specified, but sewerage is not specified, so these sources could be outsourced. He then opined that the list needed to be fine-tuned before it could be put up.

18.29. The Officer from Gujarat stated there are five government entities, Union government, state government, local government, Government authorities and Governmental entities. The present entries cover input services needed for performing service in relation to Schedule 11 and 12 of the Constitution, that are local body functions, by these entities. The entry is very wide and open to wide interpretation and appears to imply that every service taken by the said bodies appears to be exempted. Thus, the services which are exempted need to be specified.

18.30. The Hon'ble Member from Delhi stated that he also agreed with Tamil Nadu that the terms used were very wide, and there was some ambiguity. As an example, he said while installing a sewage treatment plant, a security guard may be needed. In such a case, would the security guard services would be taxed and the other things would not be taxed. He further opined that more clarity is needed.

18.31. The Secretary suggested that the list of services to be included in this exemption may be circulated to each state, and opinions may be sought from each state on the list. That list would then be examined by the fitment committee, and it would be put before the next council meeting. Other changes in these entries, as suggested by Fitment Committee be agreed to.

18.32. The Secretary referred to item at S.No. 28 of Annexure-IV regarding taxation on facilities provided to the members and ex-members of the Legislative Secretariat and Assembly. He stated that it was proposed that services being provided to MLAs and ex-MLAs by assemblies may be exempted. He stated that the same proposal in respect of MPs when it was tabled in Council was not agreed to. He further stated that it would not send a good message if the current request was agreed to. Accordingly, it was decided not to exempt these facilities.

18.33. The Secretary referred to item at S. No 7, Annexure-V, concerning the request made by Himachal Pradesh to reduce tax on ropeway from 18% to 5%. He stated that they contend that ropeway is not merely not for entertainment and tourism, but is also a means of travel. He stated that when it was discussed in the Officers meeting, most states felt that it was used for tourism, and even in Himachal, it is used majorly for tourism. He then stated that as ITC would be admissible in this case, it was recommended that it be kept at 18%. Officer from Himachal Pradesh stated that ropeways are now not only used for tourism or luxury purposes, but are now increasingly becoming a reliable, and safe means of transport. Ropeways can be used for urban transport and to decongest cities. In holiday season, there

are massive traffic jams, and in the mountains, roads cannot be widened beyond a point, and ropeways are a way out. He stated that previous attempts to popularize ropeways did not attract much investment, and one reason was that capital costs were very high. He stated that if GST on the ropeway project as well as on the related services is reduced to 5%, it would attract investment, and would provide viable transport solution to remote locations, and decongest cities. He further stated that a presentation could be made before the fitment committee so that they could reconsider it in the next meeting.

18.34. The Hon'ble Member from Uttar Pradesh stated that in places where there is a necessity, like the mountains, GST can be reduced to 5%, in other places, where it is used for tourism, it can be kept at 18%. He stated that tax slabs could be created on the basis of ticket price, with a 5% slab on ticket prices below 100 rupees, and 18% above that. Secretary requested the officer from Himachal Pradesh to send their suggestion to the fitment committee, and that it could be considered in the next Council meeting.

18.35. The Hon'ble Member from Telangana referred to item at S.No. 10 of Annexure-II, concerning withdrawing RCM on raw cotton. He stated that Telangana is one of the largest cotton growing state. He stated that withdrawing RCM would not reduce revenue, but it will help the farmers. He stated that nowadays in India, there is an excess production of wheat and paddy. He further stated that paddy growing states such as Telangana were suffering due to excess production of paddy. He stated that we needed to encourage cotton growing farmers, and that RCM is delaying realization of money by farmers. He stated that due to RCM, as input cost increases, ginners are giving money to farmers later, and this was not encouraging cotton farmers. He then stated that there would be no financial loss by removing RCM, but the farmer will realise price when he sells his crop, and it would help the farmers. Secretary stated that if the RCM is abolished, then the tax would need to be collected from the farmer, and it would be difficult to collect. Hon'ble Member from Telangana stated that the ginner would pay GST only when he sells the rolls. Revenue Secretary stated that the sale is taking place from the farmer to the ginner, and that the ginner was being asked to pay the tax, and when the ginner will sell it to the next party, he would receive the input tax credit. He stated that this issue could be deliberated by Telangana, and if it is still felt that something needed to be done, then a paper may be sent to the Fitment committee on the issue. The officer from Maharashtra stated that Maharashtra is the second largest producer of cotton and was of the opinion that the present system should continue. Revenue Secretary stated that Gujarat and Maharashtra, which are cotton growing states feel that the present system is fine, and requested the Hon'ble Member to ask officers to engage with their counter parts from other States which are cotton producing, and then a conclusion could be reached.

18.36. The Hon'ble Member from Delhi referred to item at S. No 9 of Annexure-I, Goods supplied at Indo-Bangladesh Border Haats. He enquired about the intent or source of demand of such an exemption. He then questioned what advantage would be gained from removing IGST on these border Haats, as they are small markets and are so small that they are already outside the purview. Member, GST clarified that these Haats are set up in no-man's-land between countries, and that this is traditional trade, with most items being traditional items. Licenses are given to traders, and the haats are held on certain days of the week. He then stated that as these are imports, there is no threshold IGST exemption for these.

18.37. The Hon'ble Member from Delhi referred to item at S.No. 6 and S. No 24 in Annexure-IV, concerning E-Commerce Operators such as Swiggy and Ola/Uber. He stated that these were major issues for the Metropolitan cities. He requested if there could be a little more clarity on the issue, and a small presentation could be made to help understand what is the current situation, and what is proposed and how it will benefit.

18.38. JS, TRU explained that if some restaurant is delivering through Swiggy or Zomato, then, in the current situation, the tax is being paid by the restaurant and not by Swiggy or Zomato, even though they collect it from the Customer, and pay it to the restaurant. They are acting as intermediary and they don't deposit GST to Government on restaurant services supplied through them. During examination of issue, on which Haryana has contributed significantly, it was seen that even though GST was being collected by Zomato, and reimbursed by them to the Restaurant, Restaurants in turn were not depositing the GST so collected by them, and in Haryana, the evasion was to the tune of hundreds of crores. When recovery was attempted after the discovery of the issue, it was found that the restaurant did not exist anymore at the premises. In relation to this, the proposal is that for supplies made through ECOs, that is when Swiggy or Zomato collect the tax, then they will pay the tax themselves to the Government, instead of the Restaurant. As there is no ITC allowed to restaurants, there is no ITC implication for the restaurants in the proposal, and the transactions would also get accounted for and would help in plugging the leakage.

18.39. The Hon'ble Member from Delhi asked if a person from Delhi orders from a Delhi- based restaurant, and Swiggy is operating from Noida or Gurgaon, then what will be considered as the destination. JS, TRU clarified that in the proposed change there would not be much difference on the principle by which GST revenue accrues to respective states. GST will accrue to a state where the restaurant is located in terms of existing place of supply. As such Swiggy and Zomato have state wise registrations. The Hon'ble Member from Delhi further asked that if the tax is being paid by the restaurant, then it is being paid from a fixed/known destination, and ECO is an unknown destination. Would the Government system be able to capture the order being placed in Noida or Gurgaon, irrespective of location of the restaurant and delivery and will tax be generated in Noida or Gurgaon. He asked if the taxation system would segregate each and every supply on the basis of destination. JS (Revenue). DoR clarified that GST will be assigned as per place of supply which would be captured, just like as done in case of Amazon supplies

18.40. The Secretary stated this is not a new tax as was being reported in the media; it is just ECOs collecting taxes and paying them to the Government. Tax will accrue to the respective state as it accrues today. JS, TRU stated that this proposal is proposed to be implemented from 1st January 2022, and the few issues which exist, or are raised will be clarified.

18.41. The Hon'ble Member from Delhi also stated that the whether the question related to Ola/Uber is similar to Swiggy/Zomato and if the same could be similarly explained as well. The JS, TRU stated that in respect of Ola/Uber there already exists such a provision and they (Ola/Uber) already pay taxes on services supplied through them. He stated that Ola and Uber engage small drivers, and the drivers are the service providers, but the tax is currently paid by Ola/Uber only. He also stated that now it is being proposed that the same mechanism be extended to all types of passenger transport, as per the proposal placed before the Council for its approval. He gave the example of Red Bus, which provides bus ticket booking service. He stated that the mechanism employed for Ola/Uber will now be extended to these other entities, like red Bus, as well.

18.42. The JS, TRU stated that in respect of Ola/Uber there already exists such a provision and they (Ola/Uber) already pay taxes on services supplied through them. He stated that Ola and Uber engage small drivers, and the drivers are the service providers, but the tax is currently paid by Ola/Uber only. He also stated that now it is being proposed that the same mechanism be extended to all types of passenger transport, as per the proposal placed before the Council for its approval. He gave the example of Red Bus, which provides bus ticket booking service. He stated that the mechanism employed for Ola/Uber will now be extended to these other entities, like red Bus, as well.

18.43. The Hon'ble Member from Goa stated that this was a move in the right direction. He further stated that in cases where no tax was being paid, the quality of food and its monitoring, even though it is not a concern of the GST Council, is sometimes an issue. Taxing Swiggy and Zomato will ensure that there is a record as well, about where the food is coming from and where it is going.

18.44. The Secretary asked the permission of the Chair to close this agenda item and consider according approval. The Council approved the proposals of the Fitment Committee contained in the agenda, modified to the extent as required in terms of the above discussions held in this regard.

Agenda 15: Recommendations of the 15th IT Grievance Redressal Committee for approval/decision of the GST Council

19. 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 Minutes of the 15th ITGRC are attached as **Annexure-A** in which there are 06(six) Annexures.

19.1. The agenda for the 15th ITGRC meeting covered the following issues-

- a. Eleven cases of TRAN-1/TRAN-2 filing pertaining to Court cases (**Annexure -2 of the 15th ITGRC Minutes**).
- b. 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 (**Annexure -2 of the 15th ITGRC Minutes**).
- c. 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 (**Annexure -5 of the 15th ITGRC Minutes**).
- d. Approval of Standard Operating Procedure (SOP) for correcting Technical issues requiring data fixes through backend utilities (**Annexure -3 of the 15th ITGRC Minutes**).
- e. Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches (**Annexure -4 of the 15th ITGRC Minutes**).
- f. Additional Agenda containing suggested resolution procedure for Refund case of M/s Atibir Industries in WP (T) No. 4061/2019 (**Annexure -6 of the 15th ITGRC Minutes**).

19.2. **Recommendations of ITGRC in TRAN-1/TRAN-2 Cases forwarded by the nodal officers and court cases:** GSTN post technical analysis categorized the TRAN-1/TRAN 2 cases under following categories:

- (A) category A1- Cases where the taxpayer received the error 'Processed with error.' In these cases, as per GST system logs the taxpayer had attempted to submit first time/fresh Tran-1 or revise TRAN-1 but could not file because of technical errors and
- (B) categories B1/B2/B3/B4/B6/B7 -where evidence of technical glitches were not found post technical analysis

19.3. The Committee has recommended that:

- a. out of four cases forwarded by the nodal officers; one case falling under category A1 merited 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 were recommended for opening the Portal for filing TRAN-1 while 08 cases of TRAN-1 & 01 case of TRAN-2 falling under categories B1/B2/B3/B4/B6 were recommended for rejection.

19.4. 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 rejected the case of M/s Precision Rubber Industries as it was not covered within the prescribed parameters.

19.5. ITGRC recommendation/decision on agenda for approval of Standard Operating Procedure (SOP) for correcting technical issues requiring data fixes through backend utilities.

19.6. In the agenda, GSTN has submitted that due to the complex set of validations and process requirements through multiple interactions in GST System's application, the processing errors either due to unhandled exceptional scenarios or any software glitches sometimes 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.

19.7. 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.

19.8. Accordingly, the GSTN had prepared a generic list of typologies of errors that could come and the approving authority for allowing the correcting 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

19.9. 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 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 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.

19.10. The SoP, as above at para 19.8 and 19.9 was agreed by the ITGRC members and recommended for the approval by the GST Council.

19.11. 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 was discussed by ITGRC regarding this agenda during the meeting:

- 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 recommended 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 was 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.

19.12. With regards to 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.

19.13. Discussion and Decision of the Council:

The recommendations of the 15th meeting of the ITGRC were placed before the 45th meeting of the GST Council, after considering and due deliberations, agreed with the recommendations of ITGRC and decided as follows:

- a. The GST Council approved the TRAN-1/TRAN-2 cases as recommended by ITGRC in para 2.1 above.
- b. The GST Council approved the cases of non-technical nature recommended by ITGRC in para 3 above.
- c. The GST Council approved the SOP to be adopted by the GSTN for correcting technical issues requiring data fixes through backend utilities, as per para 4.1 and 4.2 above.
- d. GST Council also approved, with reference to para 5 above that:
 - i. Waiver of interest shall be 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 waiver of interest shall not be granted.
 - ii. Since there was no legal provision either in the GST laws for waiver or refund of interest, therefore, the GST Council approved issue of an appropriate notification under Section 148 of the CGST Act.

Agenda Item 16: Agenda note for the GST Council on National Anti-profiteering Authority

20. The Secretary asked JS (DoR) to present the agenda pertaining to National Anti-Profiteering Authority.

20.1 JS(DoR) stated that NAA was constituted by the GST Council under Section 171A of CGST Act, 2017. Originally this authority was constituted for two years and its tenure was subsequently extended by two years which is now ending in November, 2021. The issue before the Council is whether to extend this tenure further or whether the Competition Commission of India Constituted under the Competition Act, 2002 can be empowered under Section 171 of CGST Act, 2017. Section 171 of the CGST Act states that the Council may constitute an anti -profiteering authority or empower an existing authority constituted under any law. Accordingly, the Council may take a call.

20.2. The Secretary stated that when NAA was formed, GST was new and rates were being decided, and there was a feeling that NAA is required to keep a watch whether tax reduction benefits are being passed on. A decision can be taken whether the work can be left to the Competition Commission of India and let the NAA tenure end in November, 2021.

20.3. The Hon'ble Member from Punjab stated that pricing decision should be dictated by market rather than the tax administration. However, since the market is not mature enough and GST rollout was also far from perfect, Punjab had favoured the setting up of NAA. He stated that his own feeling is that this is not the opportune time to close the NAA as due to pandemic, the NAA have not been able

to dispose of the cases and there is large pendency of cases. Also, as discussed a holistic view on GST rate rationalisation would be taken and hence, the tenure of this authority should be extended for another year. He further stated that he feels that it needs to be considered as to whether the Competition Commission of India would have the expertise or the domain knowledge required to handle anti profiteering cases. He suggested that the pendency of cases with NAA must be brought down to nil. Thus, one year extended tenure can be given to the NAA.

20.4. The Hon'ble member from Kerala stated that the anti-profiteering authority has investigated some cases in Kerala also and there are some more cases that are pending. When the GST was introduced, it was expected that prices would reduce because of the one country-one taxation concept and there was drastic reduction of taxes. Hence, some agency is required to look into issues of price reduction. He further stated that the passing this work to Competition Commission of India may not help as they do not have the mandate for such work. Nevertheless, an agency to examine the anti-profiteering issues is required.

20.5. The Hon'ble Member from Goa stated that he feels that the Anti-Profiteering Authority should be strengthened. He further stated that giving anti-profiteering work to the Competition Commission of India is not going to help in anyway. However, with unfolding of GST and subsequent experiences of substantial tax revenue leakage, it is opined that there should be an efficient mechanism to check anti-profiteering. Further, there is need to have a strengthened anti-profiteering authority, with all members in place and its tenure should be extended by one or may be two years to enable its proper functioning

20.6. The Hon'ble Member from Delhi stated that creation of Anti-Profiteering authority was more relevant in the initial phases of GST as important decisions on GST rates were taken and many taxes were subsumed. Even now, Fitment Committee continues to rationalize the tax rates as and when required. In such scenario, the requirement of anti-profiteering Authority shall never cease to exist. He suggested that Council may take a call on giving extension to tenure of NAA, but there is a need to consider that the constitution of anti-profiteering Authority was stopgap arrangement and it cannot continue forever.

20.7. The Secretary stated that as suggested by the Hon'ble Members, the tenure of NAA can be extended by one year up to 31.11.2022 after which it will close down and meanwhile it can be taken up with the CCI for taking up the work of NAA. He sought authority from the Council to take up the issue with CCI. The Council agreed with this arrangement.

Agenda 17 Review of Revenue Position under Goods and Services Tax &

Agenda 18. Compensation- Scenario Post June-2022 and Options

21. The Secretary stated that the item numbers 17 and 18 of the agenda may be taken up together and added that the revenue position which had improved considerably even in the present circumstances as also the scenario for the compensation will be presented. He further stated that as interest and principal would be paid from the cess itself, the cess that would be collected after 1st July, 2022 up to March 2026 would be used to pay back the loan. Further, he requested that the Council needs to take certain steps for revenue augmentation so that States are better prepared beyond July '22.

21.1. JS, DoR stated that in the current presentation (attached as **Annexure-4**), GST revenue from the inception had seen an increasing trend, even if with monthly ups and downs. The revenue in the current financial year is expected to be better than initially estimated. He drew attention of the Council to the legal framework and highlighted that the law does not provide for payment of compensation from

the Consolidated Fund of India. This has been discussed in the Council at various occasions as well as in the Parliament. He explained that after the compensation requirement till March 2020 having been fully met, to meet the shortfall in compensation fund and the immediate need of resources, borrowing was done by the Government of India and passed on to the States as a back-to-back assistance after detailed consultations with States.

21.2. Accordingly, Rs. 1.1 lakh crores were borrowed during 2020-21 to meet the gap partially and using the same formula now, Rs 1.59 lakh crores was estimated to be borrowed during 2021-22, out of which Rs 75,000 crores has already been borrowed and passed on to the states and there are still areas of more than Rs 80,000 crores pertaining to compensation for 2020-21. In 2021-22, the situation was far better and the total GST collection during the year is expected to be Rs 13.5 lakh crores. In the current year, when Rs 1.59 lakh crores is borrowed, the compensation gap will be more than covered.

21.3. To give an idea of till when the liability of the compensation requirement would be carried with protected revenue from April 2020 to June 2022 of around Rs 18.9 lakh crores, the cess collection till March 2026 shall be required to meet the liability of servicing of the debt incurred and the arrears of compensation. Against total resource which is available with the states of around Rs 8.5 lakh crores of revenue in this particular year, in the next year there will be a fall by Rs 1 lakh crores, which was a drop of 12%. Therefore, there was a need to garner additional resources prevent steep fall in resources so that the budgets of Centre and States do not get adversely impacted.

21.4. It was explained by JS, DoR that if the steep drop has to be avoided, the estimate of revenue from CGST and SGST combined would have to be about Rs 1.4 lakh crores a month or about Rs 2.5 lakh crores additional from next year onward. The need for revenue argumentation is imminent and immediate measures were required for revenue augmentation and various suggestions towards this objective have been compiled, discussed and placed before the Council in multiple meetings. Some changes are about the policy measures, some about changing the law and procedures and some are regarding administrative measures.

21.5. First broad category of suggestions was under the category of GST rate calibrations. He drew the attention of the Council to the fact that ever since the introduction of GST; the effective rate has progressively come down. He detailed that the revenue collection from different slabs i.e. from 3% was about 1%, from 5% slab was about 13.6% and from 12% was about 7%. The 18% slab provided the maximum revenue of 61.6% and 28% which had very few items provided 17% GST revenue. Considering that 5% rate gives 13.6% revenue, it was clearly evident that the base under 5% tax was quite significant and, if say 5% rate was increased by percentage point i.e. 5% is increased to 6%, it would yield about Rs 50,000 crores additional revenue per year.

The rate related changes that could be considered can be classified into following:

- The inverted duty structure should be taken up for immediate correction. Council had agreed to correct the GST rates on items such as renewable energy equipment, railway parts, pen parts, ores etc. in this Council meeting. Earlier, Council had recommended rate calibration in Mobile to correct inversion, which was implemented with effect from 1.4.2020. The proposals to correct inversion in textiles and footwear are already there with the Council since 39th meeting. It had earlier been discussed in the 43rd meeting that recommendations have been received from the Ministry of Textiles that there was a need for correcting inverted rate structure in textiles if the potential of sector has to be realized in India, growth has to be achieved and the industry has to be enabled to

become a big player in the international market. This had been discussed in detail by the Council and there was broad agreement in the sense that there is a need for correcting inverted rate structure. However, Council had felt at that point in time that because of the COVID impact, perhaps that was not the right time to look into those items. So, these were being placed before the Council to take a view on these items. Therefore, Council may take a view regarding the time from which these proposals could be implemented.

- Then upward revision of 5% rate items which have a considerable base. Initially, when GST was rolled out, it was felt that the lower rate slab should be 6%, but it was reduced to 5%.
- The third suggestion was that GST rate of certain items should be in a higher rate slab (other than for correction of inversion), for example, various kinds of scrap, paper items, walnuts and cashews. Also, a re-look at GST slabs of 12 % and 18 % needs to be done so that the items were recalibrated.
- The fourth was related to review of exemptions. There are several exemptions in goods and services, which require pruning.

Some more suggestions like reverting some items that have been brought down from 28% slab to 18% slab back to 28% slab, increase of rates on gold and precious stones and increase of cess where the rates are specific.

21.6. The issues of inverted duty structure in textile sector, dyeing services and footwear have been before the Council for some time. The Council had earlier decided that duty inversion had to be corrected but the time was not appropriate due to Covid pandemic. So, these items were being placed before the Council for decision on the matter.

21.7. The Secretary clarified that no cess would be available for distribution to states till 2026. This was the estimate based on growth assumption and cess availability every year. The above changes may be brought into effect from 1st January, 2022. Since the resources available would take a hit in July 2022, he requested the Hon'ble Members of the Council to guide on the way ahead.

21.8. The Hon'ble Member from Punjab stated that Punjab would be facing financial stress and the current situation has arisen since GST rate on some number of items was reduced from 28% to 18%, there were threshold exemptions, specific rates of cesses, a large number of exemptions in textiles, taking out certain sectors from the ITC chain like residential construction and restaurants, etc. The average rate of taxation was reduced by 20 to 25% as compared to pre-GST rate. His considered suggestion to the Council was that the Hon'ble Chairperson could constitute GoMs. One GoM to look into tariff, exemption and thresholds. The second GoM had to be on GST design and to plug leakages in the law as there were leakages in the law which they need to plug. The GoM could look into possibilities for strengthening the IT capabilities as they were losing a large amount of revenue as IT was not up to the expectations. He suggested that Council might allow some states to have SGST rates which were higher than others and cess rates needed to be reviewed for inflation. His plea was that compensation should be extended by three years, the amount of compensation could be capped at amount payable for the financial year 2021-22 and that center must take over 50% or 70% of the money which was borrowed during COVID to meet part of the compensation. This would enable the compensation cess collection to be used for continued compensation. He was willing to produce a paper for the Council and the Council could debate that paper or have a look at how to augment tax revenues.

He felt that the figures presented were very conservative, as Punjab itself was facing a loss of Rs. 17,000 crores and, therefore, estimate for the country of Rs 1 lakh crores is overly conservative. In first month of GST, revenue collection was about Rs. 91,000 to 92,000 crores. However, even after 4 years, revenue stood at Rs 1,11,000 crores. Even if it was considered that organic growth was 5% and there was 5% inflation, the revenues should have been close to Rs 1,31,000 crores. He concluded by reiterating that they would be willing to produce a paper for discussion by the GST Council.

21.9. The Hon'ble member from Jharkhand stated that around 39% of the population in the State was below poverty line and 27% population belongs to the tribal community. The buying capacity of the population was low, leading to lower GST revenue as the current GST regime favors the consumption model. Jharkhand is a mineral rich state with coal as their major source of revenue, generating a revenue of Rs 460 crores from coal cess every month. He also added that even though most of the coal was produced in their state, they were not able to produce electricity and were not able to pay electricity bills raised by Damodar Valley Corporation (DVC) which were amounting to Rs 5,200 cr. Even then their money was deducted directly from the consolidated fund. The royalties of Rs 12,725 cr. were due to them but the same were not considered for adjustment. He urged that the Council needs to look at his pleas by adopting a sympathetic approach as coal was their main revenue source. He said that compared to pre-GST, their loss in the GST regime was of Rs 3,700 crores and they were expecting that once the compensation period expires, their losses would run to the tune of Rs 5,000 crores per annum which will make it difficult for them to run their State. He requested that the GST rate on coal may be increased from 5% to 12% and a GoM/Committee may be formed to discuss it. He stated that the GDP growth rate had reduced, and this needed to be studied. He said that there needed to be thorough deliberations on revenue augmentation. He said that the council could look into the suggestions forwarded by Punjab for extension of the compensation period or the suggestion of raising the tax slabs. He also requested the Hon'ble FM to help his State in getting the royalty of Rs 12,725 crores released. One could witness both prosperity and poverty in Jharkhand and they did not have requisite infrastructure yet. To conclude, he invited the Secretary along with the officials of the Council to visit his state and thanked the UP government for organizing the GST Council meeting.

21.10. The Hon'ble member from Uttarakhand stated that the state of Uttarakhand also faced financial difficulties when they transitioned into GST. The State Government of Uttarakhand had ushered in an industrial package with the aim to increase tax receipts. He stated that Uttarakhand was not a consumer State and State had expenditure related to subsidies to people for land and electricity and social responsibilities like pensions, welfare schemes, etc. and they needed more funds for Infrastructure development. If they did not finance infrastructure, migration from borders districts would only increase which would be harmful to not only Uttarakhand but to other States as well. He took the example of ropeway stating that it was not only a mode of transportation for humans but was also used by farmers for transporting their produce and a loan was taken from NABARD for funding ropeways in the State. In 2015-16, their tax revenues under VAT were Rs 4,961cr and in 2020-21, it was Rs 4,462 cr. That means that the revenue position was same as in 2015-16 and thus the state needs the compensation amount which may be extended by five more years to 2027.

21.11. The Hon'ble Member from Rajasthan stated that he understood that the major issue was of resource mobilization and ultimately the distribution of resources could only be based on GST revenue collection and a GoM could be constituted for rationalization of rates keeping in view specific issues of States. The state of Rajasthan is also facing financial distress. Had there been no GST, States would have tackled this financial crisis on their own by managing taxes such as entertainment tax, VAT etc. Further, he opined that the situation would only be normalized if GST collection reaches Rs 1,30,000-1,50,000 lakh crores per annum. He said that due to the topography of the State, Rajasthan has always

faced issues of migration and present revenue crunch is hampering the welfare policies. He further stated that arrears of Rs 5,600 crores were due to the State of Rajasthan and the Center's share in schemes had gradually reduced from 90% to approximately 50%. He further stated that the slab rates certainly needed to be increased and requested that the government should consider changing the nature of the compensation from loan to grant.

21.12. The Hon'ble Member from Delhi said that revenue augmentation required rate rationalization and computerization. He stated that while revenue rationalization was relevant, but digitally enhanced measures like Business Intelligence and Fraud Analytics (BIFA) to check evasion were also essential. Further he suggested that there should be a centralized intelligence body for effective implementation of BIFA that would help in tracking the revenue leakages by establishing communications and provide inputs to States. He said that Delhi had used BIFA for successfully tracking revenue leakages.

21.13. The Hon'ble Member from Kerala requested for the extension of the compensation for another five years stating that the financial situation was very bleak and had been aggravated by COVID pandemic. The Central Government and the State Governments needed to collectively address this issue and in the initial one or two years, Kerala had a GST compensation gap of only Rs 3,000-4,000 crores. Naturally, there was an increase in gap in last two years due to the pandemic. He further stated that, the State's average growth was 14-16% for the last 11 years. Kerala Sales Tax rate was 14% and Central tax was also 14%, so in total tax rate was 28%. However, under GST, the tax rate was 16% approx., which meant that the State would get only 8%. Due to various compulsions and other issues, the actual average rate of taxation came to be about 11% so that the State was getting only 5.5% whereas before GST they were getting 14%. Naturally, the Centre's share also got reduced. Hence, revenue augmentation had to be looked into and suggested that rate rationalization and system upgradation would improve the revenues. He further stated that other issues such as issues pertaining to Finance Commission still existed. Earlier in 1970s or 80s they were getting revenue from the divisible pool at 3.92%, however when it came to 14th Finance Commission it was reduced to 2.45% which was further reduced to 1.92 % approx. by 15th Finance Commission. While in 2018-19, the state received Rs 17,500 crores per year from the divisible pool, it received only Rs. 10,000 crores in 2019-20. If the compensation was not continued and some special grant were not given to Kerala, then they stand to lose Rs 32,000 cr. compared to the present year.

21.14. The Hon'ble Member from West Bengal stated that it took a little time to stabilize the entire GST system. She further added that there had been five years' permission for compensation by the constitutional amendment but now another five years' extension of compensation was necessary and an amendment, as required, should be done. She emphasized that five years' extension was necessary for strengthening the revenue of States. It is more essential due to Covid and the consequential loss of revenue for two years. There have been very good suggestions put forth in presentation and a GoM could be constituted to consider the issues.

21.15. The Hon'ble Member from Puducherry extended his sincere thanks to the Hon'ble Chairperson for releasing back-to-back financial loan of Rs 517 crores to the Puducherry for the FY 2021-22 and Rs 121 crores as GST compensation for FY 2020-21. He hoped that the balance compensation for the current year would be released in a timely manner. They require at least Rs 300 crores per month to settle salary & pension bills and their commitment for the welfare of the people. If the compensation comes to an end by June 2022, they would not be able to fulfill their commitments. The Hon'ble Chief Minister had written a letter requesting the Government of India to extend the compensation for another five years. Puducherry had a large consumption base. If Puducherry had continued with the VAT regime, then considering a growth of 7% and their collections from VAT, their revenue would have

been around Rs 1,500 crores. However, presently, Puducherry collects GST revenue which is less than Rs 900 crores per year. The presentation by the Government of India indicated a ray of hope that revenue collection would increase but augmenting revenue through measures such as rationalization of tax structure, removing the anomaly of inverted duty structure and revisiting the exemption list, might still not address the structural issues faced by their government. He stated that Puducherry was not getting any benefit from Finance Commission. Hence, he requested that the GST compensation period may be extended beyond 2022 for another five years as the State was not in a position of self-sustenance.

21.16. The Hon'ble Member from Goa said that at the time of GST roll out, revenue was growing at 14% and revenue was only expected to go up. However, because of certain factors, revenue had not grown the way it was conceived in the GST Council. Now, rate rationalization has to be done. First of all, the Members tended to be State specific. If a lower rate benefitted a State, the State Member ensured that the rate was fixed much lower than the revenue neutral rate. So, large revenue was lost while conceiving the GST regime itself. It was only in the recent meetings they were very cautious because the State's revenues were not increasing. However, in couple of earlier meetings, the rates were slashed and its effect can be seen at present. If the Centre had good funds in its kitty, then the States would be looked after well. He requested to consider the revenue neutral rates. He stated that by raising the 5% slab by 1%, additional revenue of around Rs 50,000 crores could be garnered per year. While rationalizing the rates, instead of having so many rates it may be prudent to look into how many items were being taxed at 28% and on which items cess was levied etc. Then, they could have a relook at the items being taxed at 18% and other rates. By proper rationalization and with least amount of burden on the stakeholders, it was possible to collect revenue of more than Rs 1.5 lakh crores per month. The GoM in consultation with Fitment and Law Committees could come out with a rational solution which can bring everyone out of the woods and match the revenue of Rs 1.41 lakh crores which was collected in April, 2021. The compensation to the States had to continue beyond July, 2022. Without proper revenue, they would not be able to pay the expenditure bills and fulfil their commitments to people. He urged everyone to think for the country as a whole, rationalize the rates and also keep all stakeholders on board.

21.17. The Hon'ble Member from Bihar stated that the suggestions of the fitment committee and all the decisions taken in past pertaining to corrections in irregularities and glitches in input and output tax should be implemented. He further stated that all the decisions with respect to revenue augmentation should be implemented.

21.18. The Secretary informed the Council that a presentation detailing various improvements to the IT system and the various IT tools like BIFA was given during the officers meeting. He suggested that since many Members have raised the IT issues, GSTN could make a similar presentation even in the Council to make the Council aware of the developments. He highlighted that while initially there were portal related hiccups, the system is working smoothly now. Hon'ble Member from Goa agreed that recently the portal has been working exceptionally well and stressed on the need for invoice matching. On the compensation issue, the Secretary explained that while the levy of cess has been extended, extension of compensation period is a completely different issue and wondered from where the resources for the same would come since the cess collections till March, 2026 are already committed. He also asked JS, DoR to explain the IGST apportionment and CEO, GSTN to explain the BIFA tool since the respective matters were raised by some Members.

21.19. JS, DoR explained that the principles of IGST apportionment are laid down in the IGST Act and happen on account of the information given by taxpayers in their returns. He stated that it is their endeavor to ensure that the IGST balance is close to zero. With respect to compensation, he explained

that the cess available after end of two-month period is being fully released in the ratio of the compensation requirement. On both counts, the entire amounts are being fully released on regular basis.

21.20. The CEO, GSTN stated that earlier 70% returns used to get filed by the end of month but now 80% returns get filed and three or four months down the line, 90% returns get filed, implying an improvement of ten percentage points. Additionally, clear improvement can be seen in GSTR 1 filing from 37% to 39% earlier to 70% now. GSTN has done technological improvements in terms of improving concurrency and removing the redundancy, which has led to improved taxpayer experience. Earlier, for every 10,000 returns filed, 67 tickets were raised. Now, for every 10,000 of returns, the number of tickets had come down to 3.5 - 3.7. He said that as far as BIFA was concerned over a period of time they have given a lot of functionalities/tools to the States. Some States were using the tools very efficiently and they were using it far beyond what they had conceived. So, what was required was perhaps a discussion between the officers and learning/sharing of best practices. One important input he wanted to give to the Council was GSTN had given a dashboard which was called the Early Warning System, where at the beginning of the month, the risky transactions and taxpayers in the particular jurisdiction are highlighted. He also informed that NIC has produced a very good application in terms of visualization of live vehicle movement getting tracked through RFID data and some of the States like Karnataka, Gujarat etc. were able to even track live trucks and conclude which truck was moving with suspicious cargo and needs to be intercepted instead of waiting for some informer or waiting for some particular officer to generate action point. He stated that GSTN was communicating various action points and requested for feedback about action taken on them to enable him to further improve the system. He explained that recently they have started blocking GSTR-1 if two GSTR-3Bs were not filed, which means on the supply side nobody can now pass on credit without paying taxes beyond two months. Similar controls on the ITC side are also needed where a taxpayer today can take credit even beyond the 105% provided in law because it was an editable field and sought guidance of the Council. He submitted to the Council that overall, they were on a healthy path and while there was room in terms of policy work and rate structuring, there was also room for improving revenue collection through various tools.

21.21. The Hon'ble Member from UP stated that from the presentation it was clear that compensation would not be extended beyond July' 22. He said that the interest of the common man should be first and foremost objective. He further stated that the Council needed to analyze the items which were major revenue sources for States, pre-GST; where the demand cum supply had not changed and compare it with the collections post-GST implementation and try to figure out a way to resolve the difference. He said that the proposal of forming GoM could be helpful in review of the rates, etc. He said that the laws were of welfare nature and they can certainly amend if the situations demand so through deliberation. It had to be considered as to whether cess can be levied on capacity of production and if not, then the alternative also had to be evolved. He further stated that Uttar Pradesh supported the proposal that tax slabs should be revisited and if 5% slab is made 6%, it might not have a huge impact on the tax payers. Many items were moved to lower tax slabs in the past which needs to be reviewed. The enforcement should be in such a way that leakages/evasions would be minimized. The enforcement should be technology based. For example, E-way bills could be reduced from Rs 50,000 to Rs 25,000 and it could be restricted to 100 kms. per day. This could be further restricted to 20 kms. per hour. The present E-way bill needed a proper review for minimizing revenue leakages. If it could be confirmed by usage of technology that the goods were delivered at the place they were supposed to be delivered, then leakages could be further arrested. Since, only 9 months are left, the entire mechanism had to be created. He stated that in the current situation the Council should meet bi-monthly as it would help in taking timely and important decisions. He stated that Uttar Pradesh had enhanced its revenue. In 2018-

19, UP did not claim any compensation since their revenue collections were so good that they did not have to claim compensation. However, due to pandemic, like every other State, they also got affected. They stood with the decisions of the Centre and would also try to improve the enforcement mechanism and work towards revenue augmentation.

21.22. The Hon'ble Member from Odisha stated that the Finance Commission had been assigned the responsibility of recommending the quantum of transfer of taxes collected by Center every five years in the best tradition of cooperative federalism. Net proceeds of taxes were obtained by excluding cess and surcharges. However, in gross tax revenue, the percentage share of cess and surcharge which were additional revenue mobilization measure of Central government, had been increasing over the years. As a result, the total divisible pool had gone down. Due to constraints in generating new resources, it was their request that Center should bring in mechanism to include these cesses and surcharges to divisible pool so that States could also take the benefit of additional revenue mobilization. This was all the more important as the five years' window of getting GST compensation which was protecting states' revenue growth, was closing soon and the States shall face substantial fall in revenue from the coming year.

21.23. The Hon'ble Member from Telangana stated that on the issue of the IGST ad hoc settlement, after the observation of CAG, the Hon'ble Union Chairperson formed a cabinet sub-committee, and the issue had been resolved for the year 2017-18. But the same issue was pending for the year 2018-19. He requested the Hon'ble Chairperson to resolve the issue as State of Telangana was supposed to get around Rs 210 crores in ad-hoc IGST settlement. CAG had already identified in the year 2018-19 that an amount of Rs. 13,944 cr. had been transferred to the Consolidated Fund of India and the State of Telangana was supposed to get Rs 210 crores. The method was already finalized and the same may be expedited. JS, DoR explained that there was a very small amount for 2018-19. It had happened because there was a difference between the accounts. When compared to the amount apportioned by the end of the year, the actual IGST collected was slightly in excess of around Rs 6,000 cr.

21.24. The Hon'ble Chairperson stated that she would discuss the matter and sort out the said issue of IGST settlement at the earliest.

21.25. The Hon'ble Member from Assam said that the question of GST compensation arose because of shrinking of taxable base of the States on permanent basis in view of subsuming of certain taxes. The SGST rates on the commodities being lower than the existing VAT rates further made a dent in the State's revenue. The States like Assam would face a huge deficit if compensation is not extended and it would not be even able to meet its revenue expenditure. The need for GST compensation to Assam had increased due to distress caused by the pandemic and it would require about Rs 250 crores per month towards GST compensation. She firmly believed that GST compensation for the states needed to be continued for another five years as the revenue of States had not stabilized and so the present situation called for some policy intervention on priority basis and alternatively some measures must be taken to augment States' revenue.

21.26. Hon'ble Chairperson congratulated and thanked the Member from Uttar Pradesh and the State administration for the outstanding arrangements for this physical meeting of the Council which is being held after a considerable time. She enlisted the main objectives behind the introduction of GST and acknowledged that GST Council is the first federal institution of its kind. Where Centre and States deliberate together and seek solutions. She expressed that the sincere efforts by the States contributed to the monthly GST collections touching the new high of Rs. 1.39 lakh crores in April, 2021.

21.27. She recalled how Council discussed correction of inverted duty structure and deferred the final decision but agreed to correct inversion in mobile phones. She explained the fitment exercise undertaken by the Council and how the Council decided for reduction in rates on various items, which has led to reduction in the effective GST rate and could have also led to further inversion in rate structure. She also explained, in detail, how she addressed issues related to un-apportioned IGST and transfer of compensation cess to the compensation fund.

21.28. She stated that the Council has been posed with unprecedented challenges during its initial years itself but it has deftly faced the challenges with optimism. She agreed that two GoMs should be constituted to look into rates and various systemic issues raised by various Members. She suggested that the two GoMs could submit their report in two months, which could be circulated amongst States well in advance before being discussed in the Council. She drew the attention of the Council to the recommendations of the 14th and 15th Finance Commissions to bring home the point that financial problems of Centre and States are equally important, although acknowledging that these issues were outside the purview of the Council.

21.29. The Secretary stated that based on the suggestions given by the Hon'ble Members, the Hon'ble Chairperson had announced that two GoMs would be constituted. While the GoMs would look into the other suggestions, rate rationalization for textiles & dyeing services and footwear were taken up in the earlier Council Meetings multiple times and they were agreed upon and if the Council agrees, decisions on these two categories can be implemented from 1st January, 2022. Commissioner, Gujarat stated that they would prefer further discussion on this issue as their Minister could not attend the meeting. Hon'ble Chairperson recalled that even Hon'ble Member from Tamil Nadu had expressed that they would like to be part of the discussions on correction of inverted duty in textile sectors. Secretary explained that the Council had earlier agreed with the principle but decided that the time was not right then for its implementation. After deliberations, the Council decided to approve implementation of the recommendations of the Fitment Committee with respect to textile and footwear sectors with effect from 01.01.2022.

21.30. The Secretary summarized that regarding review of composition coverage and rates, some decisions were taken by the Council in the present meeting. Regarding plugging revenue leakages, the specific suggestions would be placed before the GoM. The suggestions in the Officers' Meeting on the previous day were also collated and would be presented to the GoM for consideration. He also stated that all the decisions regarding rate changes taken by the GST Council in the current meeting, unless otherwise specified in the agenda note, would be implemented from 1st October, 2021.

21.31. The Secretary to the Council mentioned that the 45th meeting of the GST Council was physically held almost after 2 years and it was a great success. The Officers' Meeting on the previous day was also a fruitful one. His experience was that the physical meetings outside Delhi proved to be highly fruitful since everyone was totally focused and available and that he was looking forward to such meetings.

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

List of Hon'ble Ministers who attended 45th Meeting of GST Council on 17th Sept 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 Pankaj Chaudhary	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendranath	Minister for Finance, Planning and Legislative Affairs
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
5	Assam	Smt. Ajanta Neog	Minister for Finance
6	Bihar	Shri Tarkishore Prasad	Deputy Chief Minister
7	Delhi	Shri Manish Sisodia	Deputy Chief Minister
8	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
9	Jammu & Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Lieutenant Governor
10	Jharkhand	Shri Badal Patralekh	Minister for Agriculture, Animal Husbandry & Co-operative Department
11	Kerala	Shri K.N. Balagopal	Minister for Finance
12	Madhya Pradesh	Shri Jagdish Devda	Minister for Commercial Tax, Finance, Planning & Statistics
13	Manipur	Shri Yumnam Joykumar Singh	Deputy Chief Minister
14	Odisha	Shri Niranjan Pujari	Minister, Finance & Excise
15	Puducherry	Shri K. Lakshminarayanan	Minister for Public Works
16	Punjab	Shri Manpreet Singh Badal	Finance Minister
17	Rajasthan	Shri Subhash Garg	Minister for Technical Education

			Dept. (Independent Charge), Sanskrit Education Dept. (Independent Charge), Medical & Health Dept., Ayurved and Indian Medical Dept., Medical & Health Services (ESI) Dept., Information & Public Relation Dept.
18	Sikkim	Shri B.S. Panth	Minister for Industries, tourism & Civil Aviation
19	Telangana	Shri T. Harish Rao	Minister for Finance
20	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
21	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs, Medical Education
22	Uttarakhand	Shri Subodh Uniyal	Minister for Agriculture, Agricultural Marketing, Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development
23	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Urban Development & Municipal Affairs Department(I/C) and Health and Family Welfare Department

Annexure-II

List of officials who attended 45th GST Council meeting on 17th Sept, 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 (Tax Policy), CBIC
5	Govt. of India	Shri D.P. Nagendra Kumar	Member (GST, Central Excise, Service Tax and Legal), CBIC
6	Govt. of India	Shri Balesh Kumar	Member (Investigation), CBIC
7	GST Council Sectt.	Dr. C.S. Mohapatra	Additional Secretary
8	Govt. of India	Shri Rajesh Malhotra	DG (Media & Comm.), PIB
9	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
10	Govt of India	Shri Sanjay Mangal	Principal Commissioner (GST PW), CBIC
11	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU
12	GSTN	Shri Manish Kumar Sinha	CEO
13	GSTN	Shri Dheeraj Rastogi	EVP (Support) & SVP (Services)
14	GSTN	Shri Vashishtha Chaudhary	SVP (Services)
15	GST Council Sectt.	Smt. Ashima Bansal	Joint Secretary
16	Govt. of India	Shri S.S.Nakul	PS to Finance Minister
17	Govt. of India	Shri Kumar Ravikant Singh	PS to MoS (Finance)
18	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
19	Govt. of India	Shri N. Gandhi Kumar	Director (State Tax), DoR

20	Govt. of India	Shri Amaresh Kumar	Additional Commissioner, GST PW, CBIC
21	Govt. of India	Shri Pramod Kumar	Director, TRU
22	Govt. of India	Shri Syed Wasif Haider	OSD, TRU
23	Govt. of India	Shri Rahul Raja	OSD to Chairman, CBIC
24	Govt of India	Shri Divyalok	Technical Officer, TRU
25	Govt of India	Ms. Rajni Sharma	Deputy Commissioner, GST PW, CBIC
26	Govt of India	Ms. Neha Yadav	Deputy Commissioner, GST PW, CBIC
27	Govt of India	Shri Jitendra	Sr. AO, PCCS, CGST New Delhi
28	GST Council Sectt.	Shri Kshitendra Verma	Director
29	GST Council Sectt.	Shri Harish Kumar	Deputy Secretary
30	GST Council Sectt.	Shri Krishna Koundinya	Under Secretary
31	GST Council Sectt.	Shri Naveen Agrawal	Under Secretary
32	GST Council Sectt.	Shri Karan Choudhary	Under Secretary
33	GST Council Sectt.	Shri Joginder Singh Mor	Under Secretary
34	GST Council Sectt.	Shri Adesh Nayak	Superintendent
35	GST Council Sectt.	Shari Manoj Kumar	Superintendent
36	GST Council Sectt.	Shri Rakesh Joshi	Inspector
37	GST Council Sectt.	Shri Vijay Malik	Inspector
38	Andhra Pradesh	Dr. Rajath Bhargava	Special Chief Secretary, Revenue Department
39	Andhra Pradesh	Shri Ravi Shankar Narayan Sudagani	Chief Commissioner of State Tax
40	Andhra Pradesh	Dr. K. Ravishankar	Commissioner State Tax GST

41	Andhra Pradesh	Shri L.Chandra Obul Reddy	OSD to FM
42	Arunachal Pradesh	Shri Kanki Darang	Commissioner (Tax & Excise)
43	Arunachal Pradesh	Shri Nakut Padung	Superintendent (GST)
44	Arunachal Pradesh	Shri Ajay Saring	PRO to Deputy Chief Minister
45	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax
46	Bihar	Shri Ravish Kishore	PS to Deputy Chief Minister
47	Bihar	Shri Arun Kumar Mishra	Special Secretary, Commercial Taxes
48	Chandigarh	Shri Mandip Singh Brar	Deputy Commissioner -Cum-Excise and Taxation
49	Chandigarh	Shri Sorabh Kumar Arora	Assistant Excise and taxation Commissioner
50	Chhattisgarh	Shri Gaurav Dwivedi	Principal Secretary, Commercial Tax
51	Chhattisgarh	Shri Khemraj Jharia	Additional Commissioner of State Tax, Chhattisgarh
52	Delhi	Shri Sandeep Kumar	Secretary (Finance)
53	Delhi	Shri Arvind Chandran	Secretary to Deputy CM
54	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner (ST)
55	Goa	Shri Hemant Kumar	Commissioner, State Tax
56	Goa	Shri Vijay Nair	OSD to Minister
57	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
58	Gujarat	Shri Riddhesh P. Raval	Deputy Commissioner, State Tax
59	Haryana	Shri Anurag Rastogi	Additional Chief Secretary, Excise & Taxation
60	Haryana	Shri Shekhar Vidhyarthi	Excise & Taxation Commissioner
61	Haryana	Shri Siddharth Jain	Additional Excise & Taxation Commissioner

62	Himachal Pradesh	Shri J.C. Sharma	Additional Chief Secretary (State Taxes & Excise)
63	Himachal Pradesh	Shri Yunus	Commissioner of State Tax and Excise
64	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise
65	Jammu and Kashmir	Shri Showkat Aijaz Bhat	Commissioner, State Taxes
66	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner, State Taxes
67	Jharkhand	Smt. Aradhana Patnaik	Secretary, Commercial Tax
68	Jharkhand	Ms. Akanksha Ranjan	Commissioner, Commercial Tax
69	Jharkhand	Shri Suryakant Shukla	Economic and Political Advisor to Minister
70	Jharkhand	Shri R.P. Singh	PS to Agriculture Minister of Jharkhand
71	Karnataka	Smt. C. Shikha	Commissioner of Commercial Taxes
72	Karnataka	Shri M.P. Ravi Prasad	Additional Commissioner of Commercial Taxes
73	Kerala	Dr. Sharmila Mary Joseph	Secretary, Taxes
74	Kerala	Dr. Rathan Kelkar	Commissioner of State Taxes
75	Kerala	Shri Abraham Renn	Addl. Commissioner, State Taxes
76	Madhya Pradesh	Shri Raghwendra Kumar Singh	Commissioner, Commercial Taxes
77	Madhya Pradesh	Shri R.P. Shrivastva	Joint Commissioner
78	Maharashtra	Shri Manoj Saunik	Additional Chief Secretary, Finance
79	Maharashtra	Shri Rajiv Mittal	Commissioner of State Tax
80	Maharashtra	Shri Rajendra Adsul	Joint Commissioner of State Tax
81	Manipur	Shri Ng. Roben Singh	Commissioner of Taxes
82	Manipur	Shri Yumnam Indrakumar Singh	Assistant Commissioner of Taxes

83	Meghalaya	Shri Arunkumar Khembavi	Commissioner of Taxes
84	Meghalaya	Shri K. War	Joint Commissioner of Taxes
85	Mizoram	Shri Kailiana Ralte	Commissioner of State Tax
86	Mizoram	Shri R. Zosiamliana	Additional Commissioner, State Tax
87	Nagaland	Shri Y Mhathung Murry	Special Commissioner of State Taxes
88	Odisha	Shri Sushil Kumar Lohani	Commissioner, Commercial Taxes & GST
89	Odisha	Shri Nihar Ranjan Nayak	Joint Commissioner, CT & GST
90	Puducherry	Shri L. Kumar	Commissioner of State Tax
91	Puducherry	Shri. K. Sridhar	Deputy Commissioner (ST)
92	Punjab	Shri V.K Garg	Financial Advisor
93	Punjab	Shri Nilkanth S. Avhad	Commissioner of State Taxes
94	Punjab	Shri Ravneet S. Khurana	Additional Commissioner, State Taxes
95	Rajasthan	Shri T. Ravikanth	Secretary, Finance(Revenue)
96	Rajasthan	Shri Ravi Jain	Chief Commissioner, State Tax
97	Sikkim	Shri Manoj Rai	Additional Commissioner
98	Sikkim	Bikash Diyali	Deputy Director (GST), CTD
99	Tamil Nadu	Shri S. Krishnan	Additional Chief Secretary, Finance
100	Tamil Nadu	Shri M. A. Siddique	Principal Secretary/Commissioner, Commercial taxes
101	Telangana	Shri R Krishna Rao	Principal Secretary Finance
102	Telangana	Smt. Neetu Prasad	Commissioner, State Taxes
103	Telangana	Shri N. Sai Kishore	Additional Commissioner (State Taxes)
104	Tripura	Shri Brijesh Pandey	Secretary, Finance

105	Tripura	Dr. Vishal Kumar	Chief Commissioner of State Tax
106	Uttarakhand	Smt. Sowjanya	Secretary, Finance
107	Uttarakhand	Dr. Ahmed Iqbal	Commissioner, State Tax
108	Uttarakhand	Dr. Sunita Pandey	Joint Comm/Nodal Officer, State Tax
109	Uttarakhand	Shri S.S. Tiruwa	Deputy Commissioner, State Tax
110	Uttar Pradesh	Shri Sanjiv Mittal	Additional Chief Secretary, State Tax
111	Uttar Pradesh	Smt. Ministhy S	Commissioner, Commercial Tax
112	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, State Tax
113	West Bengal	Shri Manoj Pant	Principal Secretary, Finance
114	West Bengal	Shri Khalid Aizaz Anwar	Commissioner, State Tax



Ratification of Notifications and Circulars

Agenda 2: Ratification of Notifications, Circulars, Orders etc. (1/2)

[Vol 1- Pg. 142-159]

Act/Rules	Notification/Circular/Order Nos.	Description/Remarks
CGST Act/ CGST Rules	Nineteen (19) Central Tax Notifications issued (No. 16/2021 to 34/2021) & five (5) Central Tax (Rate) Notifications issued (No. 01/2021 to 05/2021)	3 amendments to CGST Rules carried out, notifications for implementation of various decisions of GST Council/ GIC and COVID relief measures, etc., for providing relief by lowering of interest rate for a specified time for specified tax periods; notifying change in CGST rate of goods and services; notifying the provisions of the Finance Act, 2021; rationalising late fees; notifying extension of timelines in certain situations, etc.
UTGST Act	One (1) Union Territory Tax Notification No. 02/2021 issued and five (5) Union Territory Tax (rate) Notifications issued (No. 01/2021 to 05/2021)	Notifications for providing relief by lowering of interest rate for a specified time for specified tax periods; notifying change in UTGST rate of goods and services; giving effect to the recommendations made by GST Council in its 43rd meeting; and providing the concessional rate of UTGST on Covid-19 relief supplies.
IGST Act	Two (2) Integrated Tax Notifications issued (No. 02/2021 and No. 03/2021) and five (5) Integrated Tax (rate) Notifications issued (No. 01/2021 to 05/2021)	Notifications for providing relief by lowering of interest rate for a specified time for specified tax periods; changing the place of supply for B2B MRO services in case of Shipping industry to the location of the recipient; notifying change in IGST rate of goods and services; giving effect to the recommendations made by 43rd meeting of GST Council; and providing the concessional rate of IGST on Covid-19 relief supplies.
Circulars	Ten (10) circulars issued (Circular No. 149/05/2021-GST dated 17.06.2021 to Circular No. 158/14/2021-GST dated 06.09.2021)	Circulars to implement recommendations of the 43rd GST Council meeting; clarification on applicability of Dynamic Quick Response (QR) Code on B2C invoices; clarification on extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021; and clarification in respect of extension of timelines for filing application of revocation of cancellation of registration.

Agenda 2: Ratification of Notifications, Circulars, Orders etc. (2/2)

[Vol 1- Pg. 142-159]

- ❖ Some of these notifications and circulars have been issued **based on decisions of GST Implementation Committee (GIC)** taken during the period from **29.05.2021 to 06.09.2021**.
- ❖ The important decisions **taken by GIC** are as below :
 - * Issuance of Circular for clarifications on Dynamic Quick Response (QR) Code in B2C invoice.
 - * Waiver of penalty payable under section 125 of the CGST Act for non-compliance of the provisions regarding Dynamic QR Code between the period from 01.12.2020 to 30.09.2021.
 - * Issuance of a circular for clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.
 - * Extension of 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.
 - * Extension of the last date to avail benefit of the late fee **amnesty scheme from 31.08.2021 to 30.11.2021**.
 - * Issuance of a circular or clarification regarding extension of timelines for filing of application for revocation of cancellation of registration.
 - * **Amendment in CGST Rules:**
 - * Extended the option to furnish GSTR-3B, IFF and GSTR-I using EVC (e-verification code) from 31.08.2021 to 31.10.2021 for companies.
 - * Rule 26(1) amended w.e.f. 01.11.2021 to remove the mandatory requirement of authentication through DSC for companies.
 - * Amendment in Rule 138E with effect from 01.05.2021 to provide that the restriction on generation of e-way bills shall not apply during the period from 01.05.2021 till 18.08.2021.

Recommendations of the Law Committee

Summary of discussions on Agenda 3 in Officers' Meeting held on 16th September 2021

Agenda No	Issue/Proposal	Status during Officers Meeting
3(i) [Vol 1- Pg. 160-165]	<p><u>Aadhaar authentication of existing taxpayers under GST:</u></p> <ul style="list-style-type: none"> ▪ 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. ▪ To start with, Aadhaar authentication may be made mandatory for being eligible for <u>refund and revocation of cancellation of registration</u>. 	Agreed
3(ii) [Vol 1- Pg. 166-171]	<p><u>Agenda Note for issuance of clarification relating to export of services- condition (v) of the Section 2 (6) of the IGST Act 2017 (establishment of distinct person):</u></p> <p>It is proposed to clarify through Circular that:</p> <ul style="list-style-type: none"> ▪ A person incorporated in India under the Companies Act, 2013 and a foreign company, i.e. a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be considered merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017. ▪ Supply between such persons 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. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(iii) [Vol 1- Pg. 172-182]	<p><u>Clarification in respect of certain GST related issues through Circular:</u></p> <ul style="list-style-type: none"> ▪ W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of CGST Act. ▪ 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 (i.e. e-invoices) and production of the QR code having an embedded IRN electronically would suffice for verification by the proper officer. ▪ 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) of CGST Act from availment of refund of accumulated ITC 	Agreed
3(iv) [Vol 1- Pg. 183-186]	<p><u>Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal:</u></p> <ul style="list-style-type: none"> ▪ 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, 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. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(v) [Vol 1- Pg. 187-188]	<p><u>Mechanism to collect late fee imposed under section 47 of the CGST Act for delayed filing of FORM GSTR-1:</u></p> <ul style="list-style-type: none"> Late fee for GSTR-1 should be auto-populated in next open return in FORM GSTR-3B on the portal. The same is to be implemented on portal for prospective tax periods (from July, 2021 tax period onwards). Amendment in section 47 to delete reference to section 38 	Agreed
3(vi) [Vol 1- Pg. 189-193]	<p><u>Review of requirement of filing FORM ITC-04:</u></p> <p>Amendment in rule 45(3) of CGST Rules 2017 so as to allow:</p> <ul style="list-style-type: none"> Taxpayers, whose annual aggregate turnover in preceding financial year is above Rs. 5 crores, shall furnish FORM ITC-04 once in six months. Taxpayers, whose annual aggregate turnover in preceding financial year is up to Rs. 5 crores, shall furnish FORM ITC-04 annually. 	Agreed
3(vii) [Vol 1- Pg. 194-196]	<p><u>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 GST</u></p>	Tamil Nadu suggested to link Bank Account with PAN in case for proprietorship. This was agreed upon

Agenda No	Issue/Proposal	Status during Officers Meeting
3(viii) [Vol 1- Pg. 197-199]	<p><u>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):</u></p> <ul style="list-style-type: none"> Amendment in Section 50 (3) of CGST Act, as recommended by the Council in 43rd meeting, providing for payment of interest on ineligible ITC availed and utilized, may be made retrospectively, w.e.f. 01.07.2017. 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. 	Agreed
3(ix) [Vol 1- Pg. 200-208]	<p><u>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:</u></p> <ol style="list-style-type: none"> Insertion of sub-rule (1A) to rule 89 in CGST Rules 2017 for prescribing the procedure and time limit in respect of such refunds. <ul style="list-style-type: none"> Such refund claims can be filed before the expiry of two years from the date of payment of tax under the correct head. For past cases, two years period to commence from the date of insertion of sub-rule (1A) to rule 89 Issuance of a circular to clarify the term "subsequently held" and time limit for filing such refund claims for past as well as prospective periods. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(x) [Vol 1- Pg. 209-211]	<u>Transfer of CGST / IGST cash ledger balance between 'distinct persons' (entities having same PAN but registered in different states):</u> <ul style="list-style-type: none"> Unutilized balance in CGST and IGST cash ledger 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 said registered person. 	Agreed.
3(xi) [Vol 1- Pg. 212-213]	<u>Additional measures to tackle the misuse of ITC: Amendment to rule 36(4) of the CGST Rules, 2017:</u> <ul style="list-style-type: none"> Rule 36(4) of CGST Rules may be amended to restrict availment of ITC to that available in GSTR-2B. This amendment will be notified once section 109 of Finance Act, 2021 is notified. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xii) [Vol 1- Pg. 214]	<u>Additional measures to tackle the menace of fake invoices: Amendment to rule 59(6) of the CGST Rules, 2017:</u> <ul style="list-style-type: none"> Rule 59(6) of CGST Rules may be amended so that a registered person shall not be allowed to furnish the details of outward supplies of goods/services in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding month / tax period. 	Agreed
3(xiii) [Vol 1- Pg. 215-217]	<u>Amendment in Section 54 of the CGST Act, 2017 to remove anomalies</u>	Agreed
3(xiv) [Vol 1- Pg. 218-223]	<u>Clarification on doubts related to scope on "intermediary":</u> <ul style="list-style-type: none"> Issue a circular to clarify scope of the 'intermediary services' as per the present provisions of the IGST Act 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xv) [Vol I- Pg. 224-228]	<p><u>Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route :</u></p> <ul style="list-style-type: none"> Section 123 of Finance Act may be considered to be notified at the earliest. Class of supplies: All services may be notified, as the refund of IGST paid on export of services is filed after receipt of remittances and is processed by the jurisdictional GST officer. Class of persons: The following categories of persons, may be notified: <ul style="list-style-type: none"> Persons who have been granted Authorised Economic Operator (AEO) certification under SAFE Framework of WCO. Persons who have been granted status holder certification of 2 star or above by DGFT under Foreign Trade Policy. Government Departments, Public Sector Undertakings, Local Authorities and Statutory Bodies. 	<ul style="list-style-type: none"> A view emerged during the discussions that when proposal to amend section 16 of IGST Act to restrict IGST route was approved by Council in 39th Meeting (March 2020), a number of cases of fraudulent refunds through IGST route were noticed due to fraudulent availment of ITC. However, since then, a number of measures have been taken, either through REAP project of GSTN, or through policy interventions to discipline return filing system and also to restrict availment of ineligible ITC. Accordingly, it was felt that there may be a need to re-examine whether restriction of IGST route to such large extent needs to be undertaken at this stage, when the country needs a push to export, and such proposed measure to restrict IGST route to only 10% of the present exporters using IGST route, may cause disruption in exports for a large number of exporters.

Agenda 3(xv): Notifying the provisions of section 123 of the Finance Act, 2021 relating to **amending section 16 of the IGST Act** and to **notify the class of supplies and class of persons** who can export on payment of IGST (1/2) [Vol I- Pg. 224-228]

Issue:

- Vide section 123 of Finance Act, 2021, sub-section (3) of section 16 of the IGST Act has been proposed to be amended to:
 - make the export under LUT as the default route.
 - restrict the export/zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services
- 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 availment of ITC and therefore, to verify the refund claim properly.
- It was decided that IGST refund route 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.
- It is proposed to notify class of supplies or class of exporters, in a manner so that the provisions of the amended section 16 of the IGST Act, 2017 can be easily implemented on the portal, with least physical interface.

Agenda 3(xv): Notifying the provisions of section 123 of the Finance Act, 2021 relating to **amending section 16 of the IGST Act** and to notify the **class of supplies** and **class of persons** who can export on payment of IGST (2/2) [Vol 1- Pg. 224-228]

Proposal

- ❖ Section 123 of Finance Act, 2021 may be considered to be notified at the earliest, keeping IT preparedness in consideration (preferably by 01.01.2022).
- ❖ **Class of supplies:** All services may be notified as class of supplies under clause (ii) of sub-section (4) of amended Section 16 of IGST Act, 2017.
 - Refund of IGST paid on export of services is filed after receipt of remittances and is processed by the jurisdictional GST officer.
- ❖ **Class of persons:** The following categories of persons, may be notified under clause (i) of sub-section (4) of amended section 16 of IGST Act, 2017:
 - ❖ Persons who have been granted **Authorised Economic Operator (AEO) certification** under SAFE Framework of WCO.
 - ❖ Persons who have been granted **status holder certification of 2 star or above by DGFT under Foreign Trade Policy.**
 - ❖ **Government Departments, Public Sector Undertakings, Local Authorities and Statutory Bodies.**
 - Above categories of persons have either an established track record or they have been physically or financially verified.
- ✓ The proposal has been deliberated and recommended by the Law Committee.
- ✓ Council may also like to fix a date from which other sections of Finance Act, 2021 will come into effect.
- The proposal will help in preventing the misuse of IGST refund route and can be implemented easily on GST portal with least physical interface.

Law Committee Recommendations for Trade facilitation and Reducing litigation

Agenda 3(vi): Review of requirement of furnishing **FORM ITC-04**

[Vol 1- Pg. 189-193]

Issue:

- ❖ Taxpayers are required to file **FORM GST ITC-04** return, on **quarterly** basis, containing **details of all goods sent to job worker and received from job worker**.
- ❖ For movement of goods for job work, supplier is required to prepare a delivery challan and may also be required to generate e-way bill.
- ❖ **Representations have been received that**
 - **FORM GST ITC-04** is duplication of compliance, since e-way bill is also prepared; and
 - Taxpayers, specially small taxpayers, find compliance of filing return in **FORM GST ITC-04** on quarterly basis very difficult.

Proposal:

- ❖ LC has recommended amendment in rule 45(3) of CGST Rules 2017 so as to allow:
 - Taxpayers, whose annual aggregate turnover in preceding financial year is **above Rs. 5 crores**, shall furnish **FORM ITC-04** **once in six months**.
 - Taxpayers, whose annual aggregate turnover in preceding financial year is **up to Rs. 5 crores**, shall furnish **FORM ITC-04** **annually**.
- The proposal will benefit all those taxpayers who are required to send goods for job work.

Agenda 3(ii): Clarification relating to export of services- condition (v) of the Section 2 (6) of the IGST Act 2017 (establishment of distinct person)

[Vol 1- Pg. 166-171]

Issue:

- ❖ Export of services has been defined under sub-section (6) of section 2 of IGST Act, 2017.
- ❖ 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.
- ❖ However, due to ambiguity in interpreting the term "**establishment of distinct person**" in Explanation 1 under section 8 of the IGST Act 2017, refund claims of the exporter of services are being rejected and demands are being issued by the field formations.

Proposal

- ❖ It is proposed to clarify through Circular that:
 - ❖ A person incorporated in India under the Companies Act, 2013 and a foreign company, i.e. a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be considered merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017.
 - ❖ Supply between such persons 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.
- ✓ The proposal has been deliberated and recommended by the Law Committee.
- The proposal will help in removing ambiguity and reducing litigations relating to interpretation of export of services, thus benefiting large number of taxpayers.

Agenda 3(iii): Clarification on various issues of GST by way of issuance of circular (1/3) [Vol 1- Pg. 172-182]

Issue:

❖ **Entitlement of ITC in respect of debit note** in terms of section 16(4) of CGST Act, 2017:

- Vide amendment in Section 16(4) of the CGST Act with effect from 01.01.2021, the date of issuance of debit note has been delinked from the date of issuing underlying invoice for the purposes of availing ITC.
- However, doubts have been raised as to whether it is the **date of issuance of underlying invoice or 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).

Proposal:

- ❖ Law Committee recommended to issue clarification on the above issue:
 - W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4).

Agenda 3(iii): Clarification on various issues of GST by way of issuance of circular (2/3) [Vol 1- Pg. 172-182]

Issue:

❖ **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:**

- Doubts have been raised 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.

Proposal:

- ❖ Law Committee recommended to issue clarification on the above issue:
 - 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 (i.e. in cases of e-invoices) and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically would suffice for verification by the proper officer.

Agenda 3(iii): Clarification on various issues of GST by way of issuance of circular (3/3)

[Vol 1- Pg. 172-182]

Issue:

- ❖ **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 cases of exports of goods which are subject to export duty at NIL rate.**

Proposal:

- ❖ Law Committee recommended to issue clarification on the above issue:
 - 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
 - The goods which are not subject to any export duty and mere NIL rate specified in schedule or any customs notification would be out of restriction provided under section 54.
- The issuance of Circular as per the proposal will help in removing ambiguity and reducing litigation, thus benefiting taxpayers at large.

Agenda 3(ix): Clarification in respect of refund under section 77 of CGST Act read with section 19 of IGST Act where an intra-state supply is subsequently held as inter-state supply and vice-versa (1/2)

[Vol 1- Pg. 200-208]

Issue:

- ❖ Section 77 of CGST Act provides for refund of amount, paid as CGST and SGST in respect of supplies made considering intra-state supply, which are subsequently held as inter-state and on which inter-state tax is subsequently paid by the taxpayer, in the manner as prescribed.
- ❖ Similar provision is there in section 19 of IGST Act
- ❖ No specific rule has still been made in the CGST Rules in respect of section 77 of CGST Act/ section 19 of IGST Act.
- ❖ **Doubts** have been raised regarding:
 - The interpretation of the term “**subsequently held**” in the section 77 of CGST Act/ section 19 of IGST Act, and whether refund 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 or also available when it is subsequently found by taxpayer himself.
 - **The relevant date and time limit**, if any, for claiming refund.

Agenda 3(ix): Clarification in respect of refund under section 77 of CGST Act read with section 19 of IGST Act where an intra-state supply is subsequently held as inter-state supply and vice-versa (2/2) [Vol 1- Pg. 200-208]

Proposal:

❖ Law Committee has recommended

▪ **Insertion of sub-rule (1A) to rule 89** in CGST Rules 2017 for prescribing:

- Procedure for filing such refund claims under section 77 of CGST Act/ Section 19 of IGST Act;
- Such refund claims can be filed before the expiry of two years from the date of payment of tax under the correct head.
- For past cases, two years period to commence from the date of insertion of sub-rule (1A) to rule 89

▪ **Issuance of a circular** to clarify that:

- The term “**subsequently held**” 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 it is subsequently found/ held by the tax officer in any proceeding.
- To clarify time limit for filing such refund claims for past as well as prospective periods.

➤ The proposal will help in removal of ambiguity and legal disputes on the issue, thus benefiting taxpayers at large.

Agenda 3(viii): Clarification on interest on ineligible ITC under section 50 [Vol 1- Pg. 197-199]

Issue:

- ❖ As per recommendation of the Council, Section 50 of CGST Act has been amended retrospectively with effect from 01.07.2017 to provide for requirement to pay interest on delayed payment of tax on net cash basis.
- ❖ Representations have been received 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**”.

Proposal:

❖ Law Committee has taken a view that considering the spirit of recommendation of the council to charge interest on net cash basis, interest in such cases should be charged on ineligible ITC **availed and utilized** at 18%.

❖ Law Committee has also recommended that to provide clarity in the matter:

- Amendment in Section 50 (3), as recommended by the Council in 43rd meeting, providing for payment of interest on ineligible ITC availed and utilized, 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.
- 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.

➤ The proposal will help in removal of ambiguity and legal disputes on the issue, thus benefiting taxpayers at large.

Agenda 3(xiv): Clarification on issue of “intermediary” under
IGST Act (1/2)

[Vol 1- Pg. 218-223]

Issue:

- ❖ Under section 13(8) of IGST Act, place of supply of “intermediary” service is the place of location of service provider.
- ❖ Therefore, any supply of “intermediary” service by a taxpayer in India to any person outside the country, is not considered as zero rated supply and accordingly, refund is not admissible under provisions of section 16 of IGST Act, despite receipt of payment in foreign exchange.
- ❖ A large number of representations and references, including Parliament Questions and PMO references, have been received citing **difficulty being faced by trade and industry** due to **diverse practices** being followed in interpretation of **scope of “intermediary services”**, leading to disputes, including rejection of refund claims and/or issuance of demand notices.
- ❖ The issue was earlier considered by the Council in the 37th and 38th meeting, and it was decided the issue will be examined in detail.
- ❖ 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.

Agenda 3(xiv): Clarification on issue of “intermediary” under
IGST Act (2/2)

[Vol 1- Pg. 218-223]

- ❖ Wide consultations have been made with trade and industry to understand the problem and the issue has also been extensively deliberated.
- ❖ While as long term solution to the issue, the need for amendment, if any, in law may be explored, as **an imminent solution**, to **address the difficulty being faced** due to diverse practices in interpretation of scope of “intermediary services”, a **clarificatory circular** may be issued, clarifying the guiding principals on “intermediary”, along with some illustrations.

Proposal

- ❖ Law Committee has recommended to issue a circular to clarify scope of the ‘intermediary services’ as per the present provisions of the IGST Act.
- The proposal will help in removing ambiguity and reducing litigations relating to interpretation of scope of “intermediary”, thus benefiting large number of taxpayers.

Agenda 3(x): Transfer of CGST / IGST cash ledger balance between 'distinct persons' (entities having same PAN but registered in different states) (1/2) [Vol 1- Pg. 209-211]

Issue:

- ❖ Presently transfer of electronic cash balance between distinct entities is not permissible.
- ❖ 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.
- ❖ GST law already allows refund of unutilized balance in electronic cash ledger. However, there is a delay in processing and sanctioning of refund.
- ❖ The introduction of **FORM GST PMT-09** has already 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.

Proposal:

- ❖ Law Committee has recommended that:
 - Unutilized balance in CGST and IGST cash ledger 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 said registered person.
- ❖ However, Member from State of 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."

Agenda 3(x): Transfer of CGST / IGST cash ledger balance between 'distinct persons' (entities having same PAN but registered in different states) (2/2) [Vol 1- Pg. 209-211]

Comments on Punjab's remark

- ❖ Refund of un-utilized balance in un-utilized cash ledger, per say, is **not refund of tax**.
- ❖ 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 Consolidate Funds of Centre or States.
- ❖ 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**. 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.
- ❖ 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**.
- ❖ The **proposal is, in no way, linked to section 22 or to centralized registration**.
- ❖ 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.
- ✓ In-principle approval of Council is sought for the recommendation made by the Law Committee. Council may delegate Law Committee to draft amendments in relevant provisions of Act/ Rules and finalize the same in consultation with Ministry of Law & Justice.
- The proposal 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.

Law Committee Recommendations relating to Compliance and Administrative measures under GST

Agenda 3(i): Aadhar based authentication for existing taxpayers

[Vol 1- Pg. 160-165]

Issue:

- ❖ Sub-section (6A) to section 25 of the CGST Act provides for authentication of Aadhaar for existing taxpayers :
 - 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 Aadhaar Number is not assigned to the person.
 - In case of failure to undergo Aadhaar authentication/ furnishing proof of possession of Aadhaar, registration allotted to such person shall be deemed to be invalid.
- ❖ Aadhaar authentication has already been implemented for **new registrations**.
- ❖ Aadhaar authentication for **existing taxpayers** under the provisions of sub-section (6A) of section 25, need to be initiated **in phased manner**, in order to **curb misuse of ITC and refund facility**.

Proposal:

- ❖ 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.
- ❖ Law Committee has recommended that to start with, Aadhaar authentication may be made mandatory for being eligible for **refund and revocation of cancellation of registration**.
- ❖ Law Committee has recommended amendment in various rules accordingly.
- ❖ The amendments to be notified when requisite IT readiness is made on the portal.
- The proposal is an enforcement measure for preventing fake registrations and to prevent fraudulent availment of ITC and refunds.

Agenda 3(vii): 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 GST [Vol 1- Pg. 194-196]

Issue:

- ❖ In 42nd meeting of GST Council held on 05.10.2020, it was decided that the refund may be disbursed in bank account linked with same PAN and Aadhaar on which the registration has been obtained.
- ❖ 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.

Proposal

- ❖ Law Committee has recommended:
 - ❖ **Rule 10A of CGST Rules** may be amended so 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).
 - ❖ **Inversion of rule 96C** so that 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.**
 - ❖ The amendments to be notified when necessary IT readiness on portal is made.
- The proposal will further supplement efforts to prevent fake registrations and fraudulent availment of ITC and refunds.

Agenda 3(xii): Not allowing furnishing of FORM GSTR-1, if previous month FORM GSTR-3B is not filed [Vol 1- Pg. 214]

Issue:

- ❖ Rule 59(6) of CGST Rules, 2017 (introduced with effect from 01.01.2021) provides that a registered person shall not be allowed to furnish the details of outward supplies of goods/services in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months.
- ❖ The said rule has been enforced on portal this month.
- ❖ The present provision allows for passing on of ITC without ensuring the due tax payment in **FORM GSTR-3B** for 2 months.
- ❖ The provision needs further tightening to prevent revenue leakage by passing on fake credit without payment of tax.

Proposal

- ❖ It is proposed that rule 59(6) may be amended so that:
 - a registered person shall not be allowed to furnish the details of outward supplies of goods/services in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding month / tax period.
- ❖ Law Committee has recommended to make this amendment applicable **with effect from 01.01.2022**.
- The proposal is an enforcement measure to prevent passing of fake ITC by unscrupulous elements without payment of tax.

Agenda 3(xi): Amendment to rule 36(4) to restrict availment of ITC on invoices/debit notes to that available in GSTR-2B (1/2)

[Vol 1- Pg. 212-213]

Issue:

- ❖ Vide section 109 of Finance Act, 2021, section 16 of CGST Act was amended by inserting clause (aa) in sub-section (2) to restrict the availment of input tax credit (ITC) to the credit available based on the details of invoices furnished by the suppliers in their GSTR-1 and communicated to the recipient.
- ❖ Presently as per rule 36(4) of CGST Rules, 2017, a registered person can avail input tax credit (ITC) upto 1.05 times of the credit available based on the details of invoices furnished by the suppliers in GSTR-1 i.e. the credit available as per **GSTR-2A** on the date of filing of return.
- ❖ GSTN has started auto-populating ITC in GSTR-3B based on ITC available as per GSTR-2B of the taxpayer.
- ❖ Once amendment in section 16 of the CGST Act is notified, there is a need to amend rule 36(4) to link availment of credit on invoices/debit notes to that available in **GSTR-2B** of the taxpayer.

Proposal

- ❖ Law Committee has recommended to amend Rule 36(4) to restrict availment of ITC on invoices/debit notes to that available in **GSTR-2B**.
- ❖ This amendment will be notified once section 109 of Finance Act, 2021 is notified.
- The proposal will help in streamlining process of availment of ITC and auto-population of ITC in GSTR-3B of the taxpayer.

Agenda 3(xi): Amendment to rule 36(4) to restrict availment of ITC on invoices/debit notes to that available in GSTR-2B (2/2)

[Vol 1- Pg. 212-213]

- ❖ Law Committee initially recommended the following formulation of rule 36(4):

*"(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**."*
- ❖ Subsequently, an alternative formulation of rule 36(4) was also suggested by the Law Committee which is reproduced below:

"(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,—

*(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility; and*

*(b) the details of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule(7) of rule 60."*
- ❖ Formulation of rule 36(4) may be finalised in consultation with the Ministry of Law and Justice.

Agenda 3(iv): Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal

[Vol 1- Pg. 183-186]

Issue:

- ❖ Section 146 of CGST Act provides that Common GST 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 and for such purposes as may be prescribed**.
- ❖ Vide notification No. 4/2017 dated 19.06.2017 r/w notification No. 9/2018 dated 23.01.2018, GST portal was notified for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, and electronic way bill only. Subsequently, vide notification No. 69/2019 dated 13.12.2019, GST portal has been notified for the purpose of preparation of the e-invoice.
- ❖ However, **various other functions and purposes** such as Composition levy, Input Tax Credit, Refund, Transitional provisions, etc **do not have a common portal notified yet**.

Proposal

- ❖ Law Committee has recommended:
 - 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**, 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.
- **The proposal will prevent any legal challenges with respect to various online functionalities provided on GST portal.**

Agenda 3(xiii): Amendment in Section 54 of the CGST Act, 2017 (1/2)

[Vol 1- Pg. 215-217]

Issue: Amendment in sub-section (2):

- ❖ There is a anomaly in time period, within which refund claim of tax paid on inward supplies under Section 55 of the CGST Act, 2017, can be filed.
 - As per Sub-section (2) of section 54, a time limit of 6 months from the end of quarter has been prescribed for claiming refund, where as time limit for filing refund claims otherwise in section 54(1) is 2 years from relevant date
 - The said time limit for filing refund under section 55 has been made 18 months as per Notification No. 20/2018-Central Tax dated 28.03.2018.

Proposal

- ❖ To amend sub-section (2) of Section 54 of the CGST Act, 2017 so as to provide that a time period of two years for filing refund under section 55.
- The proposal will help in aligning provisions of the section 54(2) with the provisions of section 54(1).

Issue: Amendment in sub-section (10):

- ❖ Sub-section (10) of Section 54 of the CGST Act, 2017 provides for withholding payment of refunds/ deduction of amount from refund under sub-section (3) i.e. **the refund of unutilised ITC**.
- ❖ However, as per Section 79(1)(a) of CGST Act, recovery of any amount due from a person can be made **from any type of refund which is due to him**.

Proposal

- ❖ To amend sub-section (10) of Section 54 of the CGST Act, 2017 by deleting the words "under sub-section (3)".
- The proposal will help in aligning the provisions of the Section 54 with that of the provisions relating to recovery specified under the Act.

Agenda 3(xiii): Amendment in Section 54 of the CGST Act, 2017 (2/2)

[Vol 1- Pg. 215-217]

Issue: Amendment in Explanation (2) under section 54 -Relevant date for filing refund claim of accumulated ITC in respect of zero-rated supplies made to SEZ without payment of duty:

- ❖ As per the definition of “relevant date” in Explanation (2) under section 54 of CGST Act, no relevant date is defined presently for the refund claim of unutilized ITC in respect of the supplies made to SEZ without payment of tax.
- ❖ The said anomaly has arisen due to amendment made vide CGST Amendment Act, 2018 w.e.f 01.02.2019 to link relevant date in respect of refund claim for unutilized ITC with the GSTR-3B return for the period for which refund claim arises, but in the said amendment only clause (ii) of sub-section (3) of section 54 was mentioned, i.e. refund on account of inverted duty structure only.
- ❖ Due to this, refund of unutilised ITC on account of supplies made to SEZ without payment of tax can technically be filed any time, without any restriction of time limit.

Proposal

- ❖ To insert clause (ba) in Explanation (2) under Section 54 of the CGST Act, 2017 for specifying relevant date for refund in respect of zero rated supplies made to SEZ with or without payment of duty.
- ❖ The proposal will remove the anomaly and help in bringing parity w.r.t. time period allowed for filing refund claims in cases pertaining to supplies made to SEZ.
- ✓ The proposal to amend section 54 of CGST Act accordingly has been deliberated and recommended by the Law Committee.

Agenda 3(v): Mechanism of collection of late fee of GSTR-1 in next open GSTR-3B

[Vol 1- Pg. 187-188]

Issue:

- ❖ Sub-section (1) of section 47 of the CGST Act provides for levy of late fee for failure to file returns by the due date.
- ❖ 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** was rationalised.
- ❖ 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**.
- ❖ There is no mechanism presently to compute and collect the late fee for delayed filing of **FORM GSTR-1 on the portal**, and payment of late fee for GSTR-1 is only on self assessment basis.

Proposal

- ❖ Law Committee has recommended:
 - Late fee for **GSTR-1** should be auto-populated in next open **GSTR-3B on the portal**.
 - The same to be implemented on portal for prospective tax periods (from July, 2021 tax period onwards).
 - Amendment in section 47 to delete reference to section 38.
- The proposal will streamline process of collection of late fee on delayed filing of GSTR-1 and will nudge the taxpayers in timely filing of GSTR-1.



THANK YOU

GST- Roadmap beyond July, 2022

The 45th Meeting of the GST Council September 17th,
2021 Lucknow

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- Context of discussions
- GST Revenue trends
- Compensation cess collections vs and revenue requirement projections
- Discussions so far on revenue augmentation in GoMs and various Committee
 - CoO on revenue augmentation MFitment Committee | Law Committee | Audit Committee
 - CCT/State's suggestion on revenue augmentation
 - Suggestions/recommendation from stakeholders/line ministries
- Analysis of major intervention options recommended by GoMs/Committees
- Decision points
- Conclusions

2

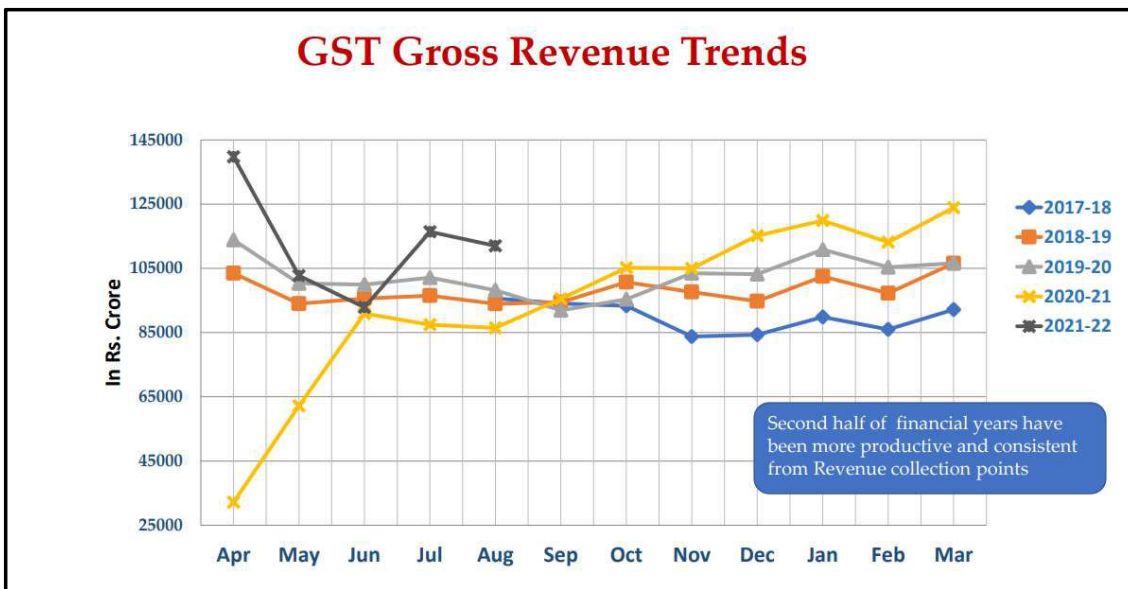
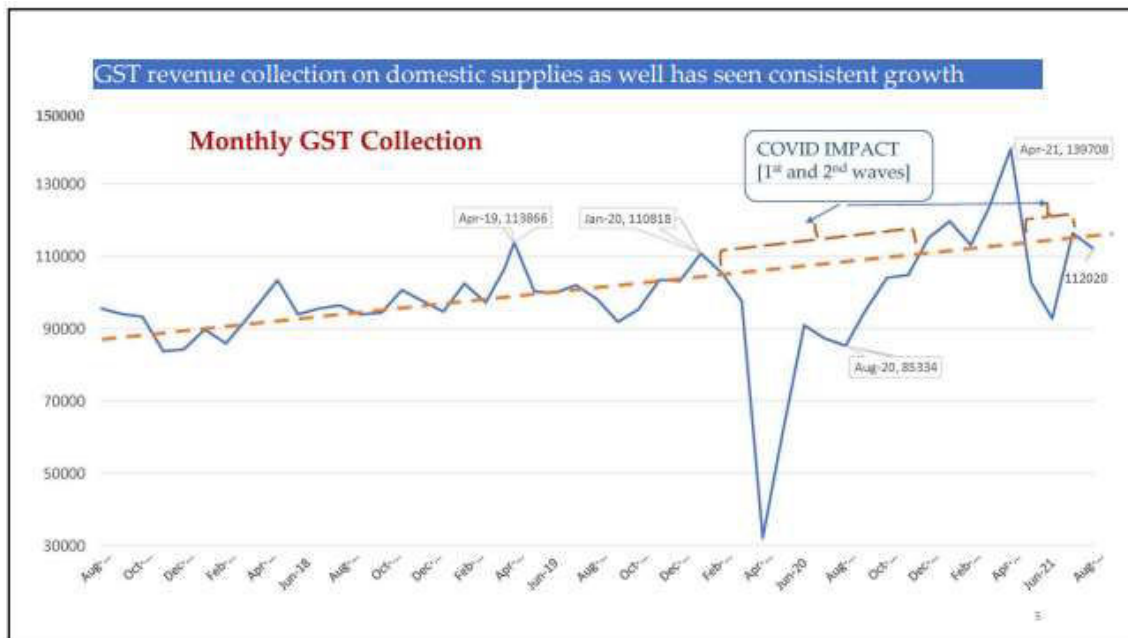
Context

- Assured revenue compensation to States in case of shortfall in revenue collection on account of implementation of GST
- Guaranteed for a period of five year [July 17 to Jun 22]
- Compensation cess levied for the purposes of generation of resources for compensation
- Today's discussion- compensation cess scenarios and to explore ways & means of generating adequate revenue post June 2022

3

GST Revenue trends

4



Compensation cess collection vs revenue requirement projections..

2

The Legal Framework [1/2]

- Section 18 of the Constitutional (101st Amendment) Act states that Parliament shall, by law, provide for compensation for 5 years.
- Accordingly, GST Compensation Act has been legislated, which provides for
 - o Formula for calculating compensation to protect 14% growth over base year revenue of 2015-16
 - o Levy of cess for the purpose of paying compensation
 - o Cess revenue to be credited to a Compensation Fund
 - o All Compensation to be paid out of the Fund

3

The Legal Framework [2/2]

- The law does not envisage/ provide for payment of compensation from the Consolidated Fund of India
- This issue was discussed in 7th, 8th and 10th GST Council meetings and then again in the 42nd and 43rd GST Council meetings
- The issue was discussed in the Parliament and has also been analysed by Ld Attorney General of India
- Possible options, as discussed in the 41st and 42nd meeting, in in case of shortfall
 - o Find resources to meet the shortfall
 - o Postpone the payment of compensation
 - o Borrow currently to meet the gap, to be repaid from future cess collections

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Compensation Scenario

- The cess collections were sufficient to meet the compensation requirement till 2019-20
- With the onset of the pandemic
 - while the protected revenue continued to grow at 14%,
 - the SGST revenues reduced, creating a gap, but
 - Cess collections for bridging the gap also fell
- Government of India borrowed ? 1.1 lakh crore in 2020-21 and would be borrowing ? 1.59 lakh crore in 2021-22 to be repaid from future cess collections.
- Arrears to the extent of ? 82,000 cr of 2020-21 still remaining to be paid after June 2022.

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Compensation scenario [2021-22]

- Average monthly collection till August has been ₹ 1,11,750 crore
- Assuming average monthly GST collection of
 - o ₹ 1,11,500 crore per month till February 2022 and o ₹ 1,23,200 crore in March 2022, the total GST collection is anticipated to be ₹ 13.5 lakh crore
- For the compensation period Feb 2021 to Jan 2022, this translates to
 - o SGST revenue ₹ 6.25 lakh crore
 - o Compensation cess available ₹ 1 lakh crore
 - o Back to back assistance ₹ 1.59 lakh crore
- The total resource available would be ₹ 8.84 lakh crore against protected revenue of ₹ 8.55 lakh crore, implying that around ₹ 30,000 crore will cover arrears of previous year

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Compensation scenario [Apr 2020- Mar 2026]

1.	Protected Revenue for 2020 Apr -2022 June	18,88,123
2.	SGST Revenue during 2020 Apr-2022 June	12,16,352
3.	Compensation Requirement [1-2]	6,71,771
4.	Compensation already released	70,000
5.	Compensation yet to be paid till 2022 June [3-4]	6,01,771
6.	Borrowings [₹ 1.1 lakh crore + ₹ 1.59 lakh crore]	2,69,208
7.	Compensation to be paid from cess [5-6]	3,32,563
8.	Debt Servicing Requirement	3,22,498
9.	Total Requirement [7+8]	6,55,061
10.	Cess available from 2021-26	6,60,883

* ^ 12,000 crore of compensation cess has to be recovered from eight States, which will also be available for release to States

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Conclusions from analysis so far

- State to experience a drop in resources from July 2022 onwards
- Even though levy of cess gets extended, the collection thereof shall be used entirely for debt servicing and payment of arrears till FY 25-26.
- The scope of enhancing revenue from cess is minimal because of base saturation.
- For states to remain on current trajectory (GST rev) post Jun 22, the monthly GST requirement would be about **Rs 1.40 lakh cr** a month (CGST + SGST).
- Even with optimistic growth, the Addl GST revenue collection requirements through augmentation measures would be ~ **Rs 2.25 -2.5 lakh cr** a year.
- Hence, immediate measures needed **for revenue augmentation.**
- **What are the options?**

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Discussions so far on Revenue augmentation in GoMs and various Committees.....

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Discussions so far [Institutional Mechanism]

- Revenue Augmentation measures have been discussed in Council & its various forums/Committees , sub-Committees on many occasions
- Major Forums are
 - o Group of Ministers [on Revenue Analysis; Capacity based levy; Movement of Gold etc]
 - o Committee of Officers [Revenue Augmentation, Fitment Committee, Committee on Audit, Law Committee, Special Committees]
 - o Suggestions from SGST Authorities, Line Ministries, CBIC etc
- The composition of these forums - very diverse and broad based with participation of many states.

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Committees concerning Revenue Augmentation

Revenue Augmentation Committee

- Maharashtra
- Tamil Nadu
- Uttar Pradesh
- West Bengal
- Punjab Odhisa
- M.P.
- Haryana
- Rajasthan
- Joint Secy [DoR]
- Joint Secy [TRU]
- Pr Commissioner [GST]
- Joint Secy [GSTC Sectt]
- ADGs[ARM, System]
- EVP, GSTN

Fitment Committee

- Gujarat
- Tamil Nadu
- Karnataka
- Maharashtra
- West Bengal
- Rajasthan
- U.P.
- Bihar
- Haryana
- Joint Secy (TRU)
- Joint Secy [DoR]
- Pr Commr [GST]
- Joint Secy [GSTC]

Committee on Audit

- Rajasthan
- Maharashtra
- West Bengal
- Delhi
- Gujarat
- Karnataka
- Bihar
- Uttarakhand
- Tamil Nadu
- Uttar Pradesh
- Punjab
- ADG[Audit]
- Pr Commissioner [GST]
- ADG [DGGI]
- ADG [ARM]
- ADG [NACIN]
- Commissioner [CGST-1]

	Law Committee
■ Maharashtra	
■ Gujarat	■ Pr Commissioner [GST]
■ West Bengal	■ Joint Secy [DoR]
■ Punjab	■ Joint Secy [GSTC Sectt]
■ Rajasthan	■ Joint Secy [TRU]
■ Odisha	■ ADGs[DGCST/ARM]
■ U.P.	■ Commissioners [CGST-3]
■ M.P.	
■ Karnataka	
■ Bihar	

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Broad categories of recommendation by GoMs/Committees

Policy measures

- Correction of inverted duty structure
- GST rate slab rationalisation
- Re-fitment of commodities in rate slabs
- Review of exemptions
- Base expansion
- Exploring RSP based levy having high value addition post manufacturing
- Expanding scope of TDS
- Making ECOs liable to pay tax
- Sector specific policy measures

Change in Law & procedure

- Strengthening registration provision
- Improving return filing behaviour
- Improving voluntary compliance
- Curbing misuse of ITC
- Special composition scheme

Administrative measures (C-efficiency)

- Data analytics for better enforcement
- Capacity building for audit and coordinated audits
- Return scrutiny mechanism
- Sector/commodity specific interventions

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Analysis of major intervention options recommended by GoMs/Committee

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1

GST RATE CALIBRATION

[as recommended by the revenue Augmentation Committee]

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Evolution of GST rates structure

- Rates initially worked out on RNR . However, lower rate prescribed on a a number of items
- Items with 31% + RNR placed in 28% slab. Some were put in 18% [e.g. tooth paste, mineral water, soap]
- Significant post GST reductions

	Rt reduced [goods]
09.09.2017	36
06.10.2017	26
10.11.2017	243
18.01.2018	24
21.7.2018	55
22.12.2018	16
20.9.2019	12
Plus	[about 80 services]

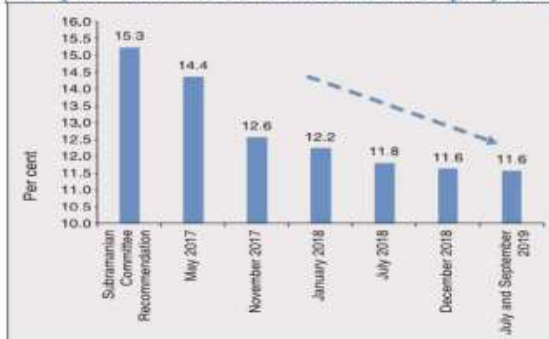
Other concessions

Threshold raised to Rs 40 lakh in goods

Composition:

- limit raised to Rs 1.5 Cr ;
- rate reduced to 1% for manufactures'
- extended to services

Implications has been about Rs 1 lac cr per year



Weighted Average (Effective) GST rate [RBI Report]

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RNR Committee's observation on lower rate

- The lower rate should be closure to the RNR rate
- This would ensure
 - o The standard rate could be kept reasonable
 - o Lesser temptation to push the commodities to lower rate

Rate-wise share in GST collection 19-20 (Excluding cess)

GST rate	Cash (% share)
3%	1
5%	13.6
12%	6.7
18%	61.6
28%	16.6

- Significant base in 5% slab
- Upward revision by 1% point would yield more than Rs 50,000 cr

22

Major items @ 5% slab

- | | |
|----------------------------------|----------------------|
| ■ Fertilizer | Goods transport |
| ■ Cotton, cotton yarn | E-vehicles |
| ■ Branded cereals | Restaurants |
| ■ Edible oil, Spices | Catering |
| ■ Sugar | Constrn of houses |
| ■ Dom LPG | Tour operators |
| ■ Oil cake/rice bran | Car renting |
| ■ Specified Handicrafts | Specified Pharma |
| ■ News print | Ships/aircraft |
| ■ Assistive devices for disabled | Coal |
| ■ Fabrics | Misc eatables |
| ■ Garments (upto Rs1000) | Walnut, cashew |
| ■ Footwear (upto Rs1000) | Bricks/stones |
| ■ Ores | Economy Air AC |
| ■ Renewable energy equipment | Rail travel Job work |
| ■ E-waste | |
| ■ Scrap | |
| ■ Certain machinery | |

Major items @ 12% slab

Mobile

Manmade Yarns
Apparel(>Rs1000)
Carpets Paintings
Handicrafts Pickle, jam, jellies Water (20 Ltr pack) Specified bio pesticides **Paper and articles Fruit Juices Tooth powder, Candles, hand bags Services to Govt/ Govt entity/authority**

- Bicycle
- General pharma
- Agri machinery
- Drip irrigation *State*
- Lotteries*
- Cinema (upto Rs 100)
- Accommodation (Rs1000 to 7500)
- Ghee/butter
- Tractors
- Railway wagons
- Toys
- Air travel(Business)
- Wooden articles
- Utensils & misc metal articles

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Exemptions- Major items

■ Education & related	■ Cereals/pulses	■ Printed books, news paper
■ Health	■ Fruits	■ Kajal kum-kum, sindoor
■ Accomo< Rs 1000	■ Vegetables/plants	■ Sanitary napkins
■ Salt	■ Animals/fishes	■ Hearing aids
	■ Bread	■ Milk/curd
■ Public transport	■ Jaggery/khandsari	■ Khadi yarn/khadi fabrics (KVIC)
■ House lease/rent	■ Animal feeds	■ Raw silk, wool, jute
■ Service to Govt	■ Honey	■ Organic manure
■ Service by or to RBI, & regulatory bodies	■ Paneer	■ Manual agri implements
		■ Misc items like rakhi

Exemptions need to be rationalised on some of the items under exemptions such as animal feeds, wool, lease of houses to corporates, certain educational and health services

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Inverted rate structure [broad categories]

- Manufactured goods in lower rate slabs (5% // 12%) suffer inverted rate structure
- Inverted rate str has led to
 - o demand for refund of ITC on services and capital goods.
 - o litigation and distortions
 - o Incentive to imports
 - o Refund ~ Rs 30000 cr a yr
- RMG Fabrics, footwear before GSTC

Items (Immediate correction)	tion]
Renewable equipmt	Utensil
Yarn	Bicycles
Fabrics	LED light
RMG and Madeups	Medical equip
Pens	Tractor
Ores	Aggarbatti Electric
Railway parts	vehicle Other Misc
Dyeing etc	items
Milling machines	
Water pumps	

Items [May continue]

Summary of recommendations by various Committees

1A

Correction of inverted rate structure for certain items, e.g., Textiles, footwear, renewables equipment, railway parts, pen parts, ores, dyeing services. Refund on account of inverted structure is about Rs 30,000 Cr. There would be additional gains in correction of inversion.

1B

Upward revision of 5% slab: The estimated revenue gain per % increase in this slab rate would be more than Rs 50,000 Cr

1C

Fitment certain items at higher rate slab, (for other than correction of inversion), e.g., scraps, paper and wooded articles, walnut, cashew etc

1D

Review of exemptions: Details as stated in slide No. 24

26

Discussions in yesterday's officers meeting

- In view of the estimated shortfall in revenues for states, there is an immediate need for revenue augmentation. Weighted average rate is 20% below the RNR of 15.3%
- The 5% rate slab may move up and so also 12% slab .
- Also there was a suggestion to review the rates on items that have been brought down from 28% to 18%.
- Inverted rate structure needs immediate corrections.
- Cess rates for items like coal (at Rs 400 /ton, it has not been revised in last four years) may be considered for increase.
- GST rate on gold/precious metals may be considered for increase to 5%.
- Exemptions must be taken up for pruning, including those relating to health, education and energy.
- Sectoral analysis be done to assess potential vs collection gap.
- This exercise must be undertaken in a time bound manner

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Decision points: Rate Rationalisation

- Correction of inverted rate structure
 - Textiles sector and dyeing services
 - ^{Fitment} _{earns} These have been deliberated. Council to take final vies
 - Railway parts, Pens, Renewable energy equipment, Ores [Fitment agenda this time]
 - Time lines and direction in respect of other items having inverted rate
- Review of rate slab
 - Review of exemptions
 - Upward revision of 5% slab [Rev implication per 1% increase- more than Rs 50,000 cr]
 - Fitment of certain items at higher rate slab (other than correction of inversion)
- Council may recommend time and manner of effecting change it recommends in this meeting
- Council may assign certain task to Fitment Committee or to any other Committee.

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4

2

Review of composition coverage and rates

[Spl committee of officers and Fitment Committee]

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Recommendation by Fitment/Spl Committee of officers

- 2A Special composition scheme for items like bricks [6% without ITC] with normal rate increase to 12% [GoM is now looking into this issue]
- 2B Exclusion of high value add and evasion prone items [goods and services] , e.g., ice cream is excluded. Certain other items like cosmetics, item at 2A above etc may be considered for exclusion, or there may be a positive list approach for inclusion in composition scheme.
- 2C Upward revision of composition rate for manufacturer
Though the revenue gains may be moderate it would help in structural correction.

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Decision points : Composition Scheme

- GoM on capacity based levy has recommended special composition scheme [w.e.f. 1.4.2022]- The proposal is to prescribe a GST rate of 6% on bricks [without ITC] and 12% [with ITC], reduce threshold exemption to Rs 10 lakh
- May like to provide direction for review of composition scheme, including,
 - o Exclusions of certain goods from composition scheme
 - o Inclusion of certain goods in special composition scheme
 - o Reviewing composition rate for manufacturers

[Total tax paid under composition scheme in 2020-21 is Rs 2,500 cr]

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3

Plugging leakage

[GoM on capacity based levy, the Law Committee and Revenue Augmentation Committee]

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Measures recommended by Revenue Augmentation Committee, Law Committee & also a GoM is looking into few issues

3A

Measures for increasing compliance may be taken in respect of items like pan masala, gutkha/chewing tobacco [As GoM may recommend]

3B

Expand coverage of TDS and TDS rates

3C

MRP/RSP based assessment of GST [with suitable abatement]
Items like pharma, footwear etc may be covered in the first instance

3D

Compliance measures for supplies through e-commerce- Making ECO liable to pay GST

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Discussions in yesterday's officers meeting

- In pre-GST regime, both Centre and States used to apply MRP based regime on items having high value addition. This need consideration in GST.
- Expand the scope of TDS. There is still huge gap in GSTR 7 and GSTR 3B numbers. TDS rate may be considered for increase.
- A committee may specifically look into and identify supplies on which E-Commerce Operator may be made liable to pay GST.

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Decision points: Plugging leakage

- GoM is looking into the issues of plugging leakage in items like pan masala/gutkha/chewing tobacco. GoM seeks extension by another three months. Hon'ble Convener to GoM may like to brief the Council.
- Making ECO liable to pay GST on services provided through it.
 - o Restaurant services provided through ECO
 - o Transport of passenger, through any motor vehicle, through ECO
- Council may assign to Law/Fitment/ any other Committee the task of:
 - o Identification of supplies for expanding the coverage of TDS to either Fitment/Law Committee or any other Group as it deems fit.
 - o Examining feasibility of RSP based levy on certain goods

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4

Compliance measures

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Compliance Measures

4A

Enforcement of rule for allowing ITC only upto amount in return 2B and min 1% cash payment rule through the system

4B

Integration of Aadhar with refund module

4C

Aadhar authentication of existing taxpayers [for refund/registration revocation]

4D

IGST refund on exports be given only on select category of cases
[Annual refund outgo in 2019-20 was about Rs 1,32,000 cr. Measures at 4B, 4C and 4D would help in plugging leakage]

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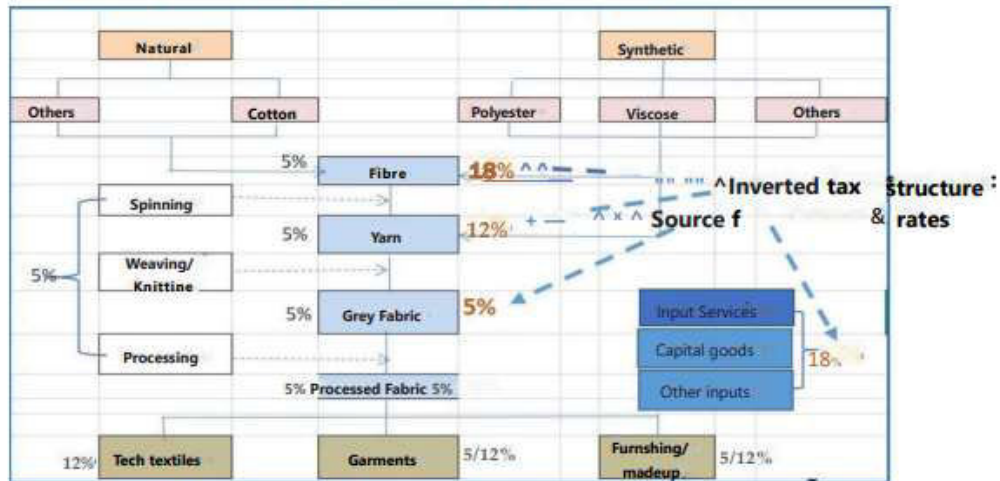
Conclusions..

- Need for revenue augmentation measure is evident
- Of these, tax policy measures viz. correction of inverted rate structure, rate slab rationalisation, review of exemption, rationalisation of composition schemes have-
 - much larger revenue potential
 - certainty of outcome
 - ease of implementation
- Administrative measures for plugging leakages, strengthening audit etc-
 - need longer time to implement
 - their outcome depend on administrative capacity
 - have moderate revenue potential
- Council may consider and decide
 - (a) Which specific measure to adopt with immediate effect
 - (b) Time frame within which others may be implemented
 - (c) Further examination requirement for any of the proposed measures- Manner and time frame
 - (d) Any other measures for adoption

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Inverted rates on Manmade Textiles segment



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 [with no refund of accumulated ITC]	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%

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 footwears

- 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 footwears having price upto Rs 1,000 per pair

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Other cases on corrections of inverted rate structure [recommendation made by Fitment]

		Present rate	Proposed rate
1	Specified railway items, wagons, parts etc	12%	18%
2	Pens [other than fountain pens, which are already at 18%]	12%	18%
3	Renewable equipment for solar, wind, biogas etc [Includes cell, panel, inverter, generator, solar generating power plant]	5%	12% or 18%
4	Metal ores and concentrates [iron, copper, aluminium, chromium etc]	5%	18%

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Other significant items having inversion

Item
Tractors
Specified Railways parts
Wooden craft
Water pumps
Aggarbati
Agri machines
Utensil
Ink
Medical equipment
Pharma
Bicycles
LED



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Agenda Item 1(ii): Confirmation of the Minutes of the 46th Meeting of GST Council dated 31st December 2021

The 46th Meeting of the GST Council (hereinafter referred to as 'Council') was held on 31st December, 2021 at New Delhi under the Chairpersonship of Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman (hereinafter referred to as 'Chairperson'). A list of the Hon'ble Members/Ministers of the Council who attended the meeting is at **Annexure-1**. A 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-2**.

2. The Chairperson invited the Revenue Secretary and the ex-officio Secretary to the Council (hereinafter referred to as 'Secretary') to begin the proceedings. The Secretary welcomed the Hon'ble Deputy CMs and Hon'ble Ministers to the 46th meeting of the Council. He welcomed the Union Finance minister, Ministers/Members from the States, officers of the State Government and Central Government to the 46th meeting of the Council at Delhi and emphasized the significance of the meeting as it had been called under the emergency clause under proviso to sub-clause (2) of clause 3 of the Procedure and Conduct of Business Regulations of the GST Council in which 48 hours of notice had been given.

3. At the outset, the Secretary placed on record the gratitude and sincere appreciation for the valuable contribution made to the Council by Shri. Nitinbhai Patel, former Member from the State of Gujarat. On behalf of the Chairperson and all the Members of Council, he welcomed Shri. Kanubhai Desai, the new Member from the State of Gujarat, who attended the meeting of the Council for the first time. He also introduced and welcomed Shri Vivek Johri, the newly appointed Chairman, CBIC.

4. He informed that a letter had been received from the Minister of Gujarat requesting that the proposed GST rate revision of textiles from 5% to 12 % w.e.f 1.1.2022 may be deferred. As this power lies with the GST Council, a meeting of the Council had to be convened. The said letter from Gujarat was received on 29.12.2021 and the notice for the emergency meeting was issued the same day for the Council meeting. He reiterated the discussions from the 39th meeting of the Council elucidating the reasons for inverted rate correction in textiles in pursuance of which the decision for rate revision in textiles was taken in the 45th meeting of the Council.

5. He informed the Council that in pre-GST regime, fabrics suffered a much higher incidence of tax. In the pre-GST regime, while cotton fabric had about 9% tax incidence, the MMF fabrics had about 13.6% tax incidence as compared to the existing 5% rate of GST. The Council had prescribed the restriction of not allowing refund of accumulated ITC. After the rollout of GST, the textile industry represented that the rate structure resulted in acute inversion in textile sector particularly at fabric stage. It was also argued that the restriction of not allowing refund of accumulated ITC on fabrics favored large composite mills while standalone Power Loom suffered. Accordingly, in stages, further relief was extended to textile sector. To begin with, GST rate on man-made yarn was reduced to 12 percent. Thereafter, refund of accumulated ITC was allowed on fabrics with prospective effect from 01.08.2018 and tax rate on job work services was also brought down to 5%. However, yarn continued to suffer significant inversion as value addition from fiber to yarn was not significant. Hence, standalone spinning units suffered. Fabric continued to have inversion on account of higher tax rate on yarn, input services and capital goods. The adverse impact of inverted rate structure had bearing on ready-made garments segment on account of accumulated ITC on services and capital goods. Also, the cost associated with inversion in fabric became a cost that was transferred by fabric manufacturers to the ready-made garments. On readymade garments, the pre-GST incidence was about 13.2% as compared to 5% rate in GST. Lower rate of 5% and job work had led to hardships to dyeing units as inputs like chemicals and dyes attracted GST at the rate of 18% and effluent treatment attracted GST at the rate of 12%. Job

workers had been seeking correction in inverted duty structure even if it required increasing the rate of tax on dyeing services.

6. The Ministry of Textiles had recommended for correcting inverted rate structure so as to unshackle it from the burden of taxes and to substantially increase employment opportunities in the textile industry. The differential rates and slow refunds of accumulated Input Tax Credit had affected the competitiveness of the industry and had proven to be a deterrent for investment in this sector. The Ministry of Textiles was of the view that for tax uniformity across the value chain, Man-Made Fibres (MMF) and yarns needed to be brought under a uniform tax slab to take care of inversion in the tax structure. This would benefit the spinning and power-loom sectors, which in turn, would create huge job opportunities. An inter-ministerial group consisting of Ministry of Textiles, Ministry of Commerce and NITI Aayog had also made similar observations. The inter-ministerial group had observed that with implied limitation on growing cotton, man-made fibre base needed to grow at least five times in the next five years. The inversion in tax structure of textile sector had led to a refund of about Rs 4000 crores which was anticipated to grow considerably in future.

7. The Fitment Committee had deliberated in detail on this issue and the impact of any calibration of GST rates and fabrics or garments on the end consumers. It was observed that the Council had recommended a lower rate of 5% on all fabrics, and lower segment garments on account of acceptability of GST rate and essential consumption nature of the item. However, the experience since the rollout of GST had been that inverted rate structure had led to significant adverse impact as stated above. It had not really benefitted the consumer by way of reduction in prices of fabrics or garments. Inversion of tax rate meant that cost on account of accumulated ITC on services and capital goods and resource cost for seeking refund of accumulated ITC on inputs got embedded in the cost of fabric and garments. This could be 4% to 5% considering services and capital goods would at least constitute of 20% to 25% of the input cost.

8. Further, removal of inversion would give a boost to the garment sector and with increasing production, the customer also would benefit. Therefore, increase in tax rates could, at the most, have a marginal effect on garments. Besides, as argued by Ministry of Textiles, there existed a strong economic justification that revised rate structure would help the sector grow at a faster pace. In this background, the Fitment Committee discussed the possible solutions to address the issue of inversion in the textile value chain. While doing so, it was kept in mind that input chemicals, capital goods and input services other than job work and inputs like buttons, dyes etc. were at 18 percent and hence low rate of 5% on MMF fabrics and garments would not help the sector. It was felt that at the garments or fabrics stage, it was not feasible to differentiate between the natural fibre and MMFs. In any case, blended fabric was quite common. Therefore, Fitment Committee was of the view that the output tax rate on fabrics and garments should be prescribed at a uniform level of 12%. It was also discussed that as per the recommendations made by the Ministry of Textiles and Inter-Ministerial Group (IMG), the GST rate on fibres should be lowered to 12% to bring them at par with yarn to avoid inverted rate structure at yarn stage. As the value addition at the fibre stage was significant and the import parity price for fibre was about hundred rupees per kg, the fibre manufacturer would not suffer adversely on account of inversion.

9. The Secretary stated that the objective of above discussion was to show that the Council and the Fitment Committee had duly deliberated on the issues that arose in the textile sector in the past and had made the recommendations after due consideration. With the permission of the chair, he requested the Hon'ble Member from Gujarat to introduce the issue.

10. Hon'ble Member from Gujarat stated that Covid had impacted GST revenues, adversely affecting the State's financial situation. Also, the GST compensation amount would not be available to

the States after June, 2022. The GST compensation had helped States to manage their financial situation much better despite strained finances due to Covid. During the last Council meeting at Lucknow, a few important decisions were taken keeping in view the twin issues of GST compensation and low GST collection. Two Group of Ministers (GoMs) were set up for rationalization of rates and restructuring of GST framework, suggesting procedural reforms, improving tax administration and preventing tax evasion. He requested to ensure that the recommendations of the GoM be submitted at the earliest and the decisions should be taken based on their recommendations to lay a clear roadmap for GST in forthcoming days.

11. One of the decisions in the Lucknow meeting was regarding rate rationalization and removal of inverted duty structure in textile sector. In the meeting, it was submitted then by Gujarat that since Textile sector plays a vital role in economy of the State and therefore, any decision in this regard must be implemented in consultation with it. The State had received the representations from trade and industry regarding the notification issued for the purpose of bringing the change in the rate of GST in textile sector. These changes would impact the sector significantly, particularly the manufacturing of MMF at Surat and cotton fabric industry which was spread all over the State. The MSME sector and the labor market could also be affected adversely, especially when the sector was yet to recover from Covid pandemic. Keeping in view of the overall situation, he requested the Council to put on hold, the decision on textile sector and consider the views of all the different stakeholders before arriving at a final decision.

12. The Secretary thanked the Hon'ble Member from Gujarat for also bringing attention of the members to the compensation cess along with textile sector issue. He emphasized that the compensation amount would stop from 30th June 2022.

13. Hon'ble Member from Tamil Nadu thanked the Chairperson for arranging the Council meeting at a short notice. He stated that not only were they effected by Covid situation but were already in relatively declining growth rate and all the data suggested that MSME and individuals had been more effected than large corporates and relatively affluent individuals. The Union Government had projected and spelt out many schemes to support this sector. In that context, he made the distinction that while there were strategic and global implications for man-made fibres, the relative difference between man-made and natural fibre was quite stark. Man-made fibres were largely capital intensive and technology intensive and run by corporates. Natural fibres were largely processed using manual labor and are labour intensive and had a direct impact on farm prices for the raw materials. Given the economic situation, from the Tamil Nadu perspective, the rate hike would be a huge hike, at a wrong time. Before GST was implemented, there was complete exemption for natural fibre and readymade garments were at 5% under the VAT regime. The textile industry in Tamil Nadu is one of the largest employers, especially after farming. Manufacturers' associations, farmers' associations and other associations from almost every district in Tamil Nadu including Madurai had represented against the hike. He requested that the increase in tax rate be held in abeyance for greater discussion as suggested by Hon'ble Member from Gujarat. If there was an urgent need to implement changes, then a threshold value level like Rs 3000 or Rs 5000 or more be kept, above which, levy of GST at the rate of 12 % be charged and below this, a levy of GST at the rate of 5 % should be considered, as an alternative.

14. Hon'ble Member from West Bengal stated that they had opposed this decision in the 45th meeting of the Council and favoured the GST rate of five percent. On 18th of November, 2021, the Central Government had already issued a notification and the changes were scheduled to be effective from 1.1.2022. The volume of the overall textile market was about Rs 5.4 lakh crore and 80 to 85 percent of it comprises natural fibre and the rest comprises man-made fibre. Inverted tax structure existed in the

man-made fibre sector with inputs being taxed at the rate of 18 percent, but it was only 15 to 20 percent of the total volume of the industry. The textile industry was very crucial for employment generation in the country which currently employed around 4 crore people. 85% of the end retail market was taxed at rate of 5% which comprises sari, readymade garments or others having value less than Rs 1000. The total revenue yield from this sector was around Rs 20,000 crore. Estimates show that revenue gained from the upward revision from 5% to 12% would be considerable but the overall impact would be devastating. It was estimated that this would result in a drop in the volume of demand by 3%. The industry ran on a slender margin of around 1 to 3 percent for small and medium scale players in spinning, weaving and garment sector. Evidently, it would be impossible for them to absorb this shock of seven percent increase in tax rate. Estimates show that this would create a situation where one lakh small units would close rendering 15 lakh people jobless. Many units in this sector came to the fold of formal economy after the introduction of GST. If not altered, this move of hiking tax rate by 7% would push many out of the formal sector and promote parallel economy. Therefore, the decision for this rate revision needs to be relooked in its entirety. In addition to this, she requested that though it was not in the agenda, the footwear rate revision along with the works contract which had been hiked from 12% to 18% also needed to be looked into.

15. Hon'ble Member from Puducherry stated that the Union Territory of Puducherry agreed in principle that the inverted duty structure should be corrected. However, the proposed increase in tax rates on textile with effect from 01.01.2022 would affect the textile sector especially MSME units. Further, it would lead to additional burden on the common people. Hence, the Council may consider postponing this decision after deliberations. He also requested that the decision to not extend the GST compensation to the States beyond June, 2022 may also be reconsidered otherwise Puducherry would face severe financial stress and ongoing welfare and developmental schemes may get affected. He suggested to continue with the compensation for a further period of five years.

16. Hon'ble Member from Goa stated that the decision to increase tax rate on textiles from 5% to 12% was only to correct the inverted duty structure. This issue should be linked to the bigger issue of rate rationalization. The decision to increase the GST rate on textiles required detailed study based on data. The impact of increase in GST rate on employment would also have to be factored in. He fully agreed with the proposal from State of Gujarat to defer this decision to increase GST rate till a thorough study on this matter was done.

17. Hon'ble Member from Andhra Pradesh reiterated their position to defer the decision of increase in GST rate on textiles. He stated that a deeper study of the industry had to be made as various farm produce go into making textiles. Detailed study on the share of apparel vs fabric, the share of different yarns, natural or manmade, that went into the fabric and the estimate of future refunds was required. Such a study could be made by the GoM. State of Andhra Pradesh had 3 lakh people employed in the weaving industry and was more into natural yarn and its related industries. A deeper study on these aspects would enable sound decision making.

18. Hon'ble Member from Rajasthan thanked the Chairperson for calling the emergency meeting of the Council for the purpose. He stated that the deferment of the earlier decision of the Council was not a long term solution as the external environment would not change especially in the light of Omicron variant of COVID. Hon'ble Chief Minister of Rajasthan had also written that in the light of COVID situation, changes in the GST rates should not be made. He proposed that rate changes should not be done, not only on textiles but also on footwear. However, keeping in view the situation of the States, there should be a long term policy. He stated that the stand of State of Rajasthan was that there should be a decision to not change the GST rates for two to three years pursuing a long term policy. Just as

textile was basic need for the common man, footwear was also a basic necessity and therefore the decision to increase GST rate on footwear should also be deferred. He also requested that GST Compensation which would end in June, 2022 should be extended till, at least, upto 2027.

19. The Secretary brought to the notice of the Council that this issue was discussed in the 38th, 39th, 40th, 43rd and 45th meeting of the Council. The Fitment Committee also deliberated on this issue in great detail. He quoted the reference from Ministry of Textiles and NITI Aayog to emphasize that revenue consideration was not the basis of the decision to do away with the inverted duty structure in textiles. It was because enough investment was not being made in the textile sector since ITC on input services and capital goods could not be refunded and it got embedded in the cost of the goods. The inverted duty structure gets corrected at around tax rate of 9% to 9.5%. So, finally, 4% to 4.5% would be embedded in the cost. Ministry of Textiles, NITI Aayog and part of the industry had suggested that unless the inverted duty structure was corrected, India cannot compete at international level in textiles. Further, while internationally it was seen that man-made fibre (MMF) was taking precedence over natural fibres, in India, the position was reverse.

20. Hon'ble Member from Kerala stated that they supported the proposal to defer the decision but a detailed study was imperative. He also requested the deferment of increase in GST rate on footwear. He added that the earlier decision to increase the GST rate on works contract from 12% to 18 % in relation to government entities should also be reversed. He also stated that it was the view of many Hon'ble Members that the GST Compensation should be extended.

21. Hon'ble Member from Odisha stated that he had submitted earlier to the Council that there were two aspects of textiles sector, the power loom and the handloom. There should be two tax slabs and the GST rate on handloom should be less than 5%. His constituency was globally famous for manufacture of silk sarees. Odisha is famous for Sambalpuri silk saree. The handloom sector as a whole embodied the traditional wisdom and cultural wealth of India and had a role in Atmanirbhar Bharat. The handloom and craft sector was under severe stress as average household income of handloom industry was only Rs 3,042 per month. The pandemic had exacerbated the situation and weavers had lost their livelihood. The cost of cotton yarn had also increased by nearly 30% to 40% this year. Thus, handloom sector should be taxed at a lower rate.

22. Hon'ble Member from Uttar Pradesh thanked the Hon'ble Chairperson for convening the meeting to discuss the sensitive issue of textiles and also appreciated Gujarat for raising the issue. At the commencement of the GST regime, the GST rate on textile was 5%, on threads and chemicals it was 12% and ITC refund was blocked. Later in July, 2018, it was decided to give the refund of ITC on inverted duty structure. He requested that the GST rate on textile be 5% and refunds of ITC prior to July, 2018 may be blocked since refunds were a liability.

23. Hon'ble Member from Bihar stated that when it was decided to increase the GST rate on textiles in the previous meeting, there were negative reactions from the textile industry and public in general. He supported the proposal of the State of Gujarat to defer the rate revision as it was in favour of the common man. Interventions should be made for boosting the sector, encouraging investments and creating a niche for India at an international level. The Hon'ble Member from Bihar further stated that India was the global leader in the textile sector and the Council should strive to put in place a mechanism which attracts investment and fuels growth in the textile sector so that the country can reclaim its past glory as the world leader and textile hub of the world.

24. Hon'ble Member from Tamil Nadu stated that several observations were made on the percentages of various inputs, their costs and their likely impact. He requested that if such studies were

available, they may be circulated to the Members. If such studies were not available, they need to be commissioned. He hoped that the GoM constituted by the Hon'ble Chairperson would look into all of this.

25. Hon'ble Member from Madhya Pradesh submitted that post decision to increase the GST rate on textile in the 45th Meeting of the Council; the State had received several representations from trade to reconsider the decision. He further submitted that textile was a very important sector in the State and this decision may financially hit the sector which was recovering from impact of COVID pandemic. He stated that Madhya Pradesh had more than 20000 registered businesses in textile sector generating approximately Rs. 150 crore of GST revenue and employing millions of people. He requested that in this scenario, the Council should reconsider the decision to increase the GST on textiles from 5% to 12 %.

26. Hon'ble Member from Tripura stated that he supported the representation made by Gujarat and the issue required more consultation with the stakeholders. He agreed with Odisha that there should be distinction between power loom and handloom textiles while deciding tax rates.

27. Hon'ble Member from Delhi was appreciative of calling the Council meeting at a short notice on the basis of a request from a Member for discussing an issue of urgent nature. He stated that there was a need to rationalize the tax in the sector to correct the inverted duty structure and for this a detailed presentation could be made by Ministry of Textiles on cons of increasing the GST on textiles from 5% to 12 % as pros had already been discussed in the earlier Council meetings. He stated that he had always advocated lower taxes as it resulted in higher compliance. He stated that impact of increase in tax rates on textile sector in terms of job, investment and economic condition required further deliberations and study. The decision could be deferred or rolled back and study could be undertaken to analyse the complexities in the textile sector other than tax alone in scenario of the tax rate hike.

28. Hon'ble Member from Rajasthan submitted that alternatives like new tax slabs need to be explored. He suggested formation of a Committee to study the GST taxation system from long term perspective after dividing the economy in to various sectors and then identifying the basic sectors where there should be no increase in tax rates. This would help in framing long term policies on issues like investment and encouraging new enterprises.

29. The Secretary stated that both Delhi and Rajasthan had raised very relevant points and that facts and data available with Fitment Committee should be circulated among the Members of the Council to help them in making informed decisions.

30. Hon'ble Member from Delhi stated that the presentation in the 39th GSTC meeting was in the perspective of taxation in textile sector but as Finance Minister of a State, he reiterated the need to look at rate revision from a wholistic perspective encompassing issues like employment, etc.

31. The Hon'ble Chairperson stated that the issue of inversion had been discussed in multiple meetings of the Council and Council has devotedly spent considerable time deliberating upon the matter. She further stated that on this issue, not only from Gujarat but several other representations had also been received in December, 2021 after the decision to increase the GST on textiles was taken in September, 2021 to implement the increase w.e.f 1.1.2022. She stated that in the Council meeting, a presentation may be made by the Fitment Committee on this issue for better understanding of all including the possibility of differentiating between the power loom and the handloom, and man-made and natural fibre. She further referred to the observation made by the Hon'ble Member from Uttar Pradesh that no refund of ITC was given prior to 2018 in case of 5% GST and stated that this aspect had been discussed in the Council earlier. The Council may like to discuss at some time whether there was

some merit in going back to the situation which prevailed prior to 2018. She further stated that Council had discussed the issue of inversion in various meetings and it was unanimously decided to defer the decision due to the prevailing COVID situation. The decision to correct inversion was taken in September. Further, there was a GoM on Rate Rationalization and the items on which inversion correction is required to be done by the Council were also within the purview of this GoM. She further insisted that a call on the agenda should be taken as new rate on textiles were scheduled to be effective from 1.1.2022.

32. In response to the comments made by the Hon'ble Member from Delhi, the Secretary submitted that Niti Aayog and Ministry of Textiles were involved in the discussions including issues of investment and employment which were briefed to the Fitment Committee. However, in future even if there was a need to call any experts on the matter to give their suggestions or to make presentations on the impact on the textile sector on aspects other than taxation, it could be done. He further stated that the long term policy as suggested by the Hon'ble Member from Rajasthan may be considered by the Committee on tax rationalization. He further cautioned that inverted duty structure led to refunds and the problem got compounded due to fake invoices while revenue augmentation efforts were taken with the help of technology, and many other policy decisions were taken to stop tax evasion.

33. Hon'ble Member from Haryana stated that he supported the proposal and also requested to reconsider the case of rate revision in footwear also on similar lines.

34. Hon'ble Member from Himachal Pradesh was of the view that inverted duty structure needed to be rectified to attract investment. Textile sector was gravitating towards man-made fibre. He stated that the consensus in the Council was to defer the decision to hike the GST rate on textiles from 5% to 12% and he agreed with it. Also, the refund of ITC should be blocked. He also requested to extend the time of compensation cess till the year 2027.

35. Hon'ble Member from Sikkim supported the consensus in the Council to defer the decision on rate revision on textiles.

36. The officers of Arunachal Pradesh, Assam, Chhattisgarh and Jharkhand supported the proposal to defer the decision.

37. The officer from Karnataka conveyed the message of Hon'ble Chief Minister that he supported the consensus but with ITC restrictions, as proposed by the State of Uttar Pradesh.

38. The officer from Maharashtra pointed out that as the member of Fitment Committee; they had made significant deliberations while making the recommendation and therefore, some kind of analysis as to why the decision was being deferred, should be presented. Further, in the current year due to various pressures, it was very difficult to estimate resources for the coming year's budget due to following reasons (a) Advisory from the Central Government to reduce VAT on fuels (petrol & diesel) (b) Advisory from Central Government to reduce VAT on ATF (c) Lack of clarity on the decision regarding GST rate on textiles (d) Pending proposals with the GoM on Rate Rationalization. He stated that the next time the Council decided to hike GST rate, there would be similar demands for rollback. He further conveyed the opinion of Hon'ble Member from Maharashtra that the Covid -19 pandemic had affected the livelihood of millions of people and strained the economy. He had suggested that at this juncture, decision to increase tax rates on textiles be deferred and further decision may be taken after a proper review. He had further added that as the revenue protection is not extended to States beyond 30/06/2022, it is going to adversely affect the State's finances thus the State's revenues should be protected as per the current arrangement at 14% increment every year beyond June, 2022.

39. In response to a query of Hon'ble Member from Rajasthan about the members in the Fitment Committee, Hon'ble Chairperson mentioned about the same and the list of States was provided. He enquired whether the point of view of the States was put forth during the meetings by the members of Fitment Committee, to which the Secretary stated that the nominated officers are expected to take clearance from the political executive before placing the views.

40. Hon'ble Member from Tamil Nadu stated that even the political executives also face the dilemma between revenue augmentation vs the interests of the industry. Further, he stated that the Convener for GoM on Casinos, Race Courses and Online Gaming was Shri. Nitinbhai Patel, then Hon'ble Member from Gujarat. Due to changes in the Gujarat cabinet, a new convener need to be named and requested that the functioning of the GoM and all other Committees may be better integrated.

41. Hon'ble Member from Odisha stated that inverted duty structure is only in 15% part of the Sector i.e. power loom and that 85% i.e. Handloom should not suffer due to the rest of the 15% of textile sector.

42. The officer from Uttarakhand conveyed the opinion of Hon'ble Member from Uttarakhand that the inverted duty structure had led to distortion in the textile sector which needed to be corrected. However, he had suggested that keeping in view the representations received from trade and Ministry of Textiles, it would be appropriate that the decision to increase the tax rate on Textiles may be deferred for a certain period.

43. The officers from Nagaland, Telangana, Punjab and J&K agreed with the emerging consensus and Telangana suggested that the decision should be for a longer term rather than two or three months.

44. The Secretary observed that there was general consensus to defer the hike in GST rate on textile from 5% to 12% but UP, Himachal Pradesh and Karnataka mentioned about blocking the refund of ITC also.

45. Hon'ble Member from Gujarat stated that blocking of refund would not be a prudent decision as it would discourage investment in a big way and also lead to tax evasion.

46. Hon'ble Member from Haryana stated that rather than blocking the refund of ITC, GoM should finalize the deliberations within a deadline and present it to the Council so that a decision could be taken.

47. Hon'ble Member from UP requested that the State exchequer should not face the burden of refunds and to go back to pre-2018 status where refund was not available especially in the light of discontinuance of GST Compensation from July, 2022.

48. Hon'ble Chairperson clarified that the rate was at a level whereby the output tax was higher than the input tax. The larger interest of the Council was to go ahead with the inversion correction and the Council was not looking for additional revenue in this case. If there was a perspective that if refunds were stopped, then no investments would come in the sector just the same holds true with inversion scenario also. She mentioned that there are Performance Linked Incentive (PLI) schemes of the Government but there was hesitation to invest in the textile sector due to inversion of duty.

49. Hon'ble Member from Tamil Nadu stated that presently there was no blockage on refunds and GST on textiles was at 5%. The same policy should be continued till the Council took a comprehensive and informed decision.

50. The Secretary stated there was consensus in the house to defer the tax revision in the textile sector. He also assured the Council that the GoM on Rate Rationalization would discuss this issue

threadbare and all the points raised by the Hon'ble Members would be discussed in the GoM. If required, NITI Aayog would make a presentation to the GoM. He informed that this GoM was not only looking into textiles but also looking at a larger and broader framework of GST which was important in the context of GST Compensation. He urged the GoM to submit the report by February, 2022 so that the GST Council Secretariat could evaluate and process the report and thereafter, the Council could take a considered decision on all these matters. He stated that the GoM would be assisted by the Fitment Committee and both taken together, there was a broad-based representation from many States. The Fitment Committee itself had also taken views of other States. He stated that the Council decided to defer the decision of increasing the GST rate on the textiles from 5% to 12% till larger deliberations were carried out.

51. The Chairperson stated that the GoM on Rate Rationalization constituted under the convenership of Hon'ble Chief Minister of Karnataka, comprised Members from Bihar, Goa, Kerala, Rajasthan, UP and West Bengal. She reiterated that this GoM would discuss the issue of textiles as well and should submit its report on rate rationalization inclusive of the textile issue by late February, 2022 or in the first week of March, 2022 to the Council.

52. The Meeting ended with thanks to the Chair.

List of Hon'ble Ministers who attended the 46th Meeting of the GST Council on 31.12.2021			
S. No	Centre/State	Name of Hon'ble Minister	Charge
1	Govt. of India	Smt. Nirmala Sitharaman	Union Finance Minister
2	Andhra Pradesh	Shri Buggana Rajendranath	Minister for Finance, Planning and Legislative Affairs and Commercial Taxes
3	Bihar	Shri Tarkishore Prasad	Deputy Chief Minister
4	Delhi	Shri Manish Sisodia	Deputy Chief Minister
5	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
6	Gujarat	Shri Kanubhai Desai	Finance Minister
7	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
8	Himachal Pradesh	Shri Bikram Singh	Minister for Industries & Transport
9	Jammu & Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Hon'ble Lieutenant Governor
10	Kerala	Shri K.N. Balagopal	Finance Minister
11	Madhya Pradesh	Shri Jagdish Devda	Minister for Commercial Tax, Finance, Planning & Statistics
12	Odisha	Shri Niranjana Pujari	Minister, Finance & Excise
13	Puducherry	Shri K. Lakshminarayanan	Minister for Public Works
14	Rajasthan	Shri Subhash Garg	Minister of Technical Education Dept., Ayurveda and Indian Medical Dept., Public Grievances & Redressal, Minority Affairs, Waqf, Colonisation, Agriculture Command Area, Development & Water Utilisation
15	Sikkim	Shri B.S. Panth	Minister for Commerce & Industries, Tourism & Civil Aviation
16	Tamil Nadu	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resource Management

17	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
18	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs, Medical Education
19	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Finance

List of Officials who attended the 46th Meeting of the GST Council on 31.12.2021			
Sl No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Shri Tarun Bajaj	Revenue Secretary
2	Govt. of India	Shri Vivek Johri	Chairman, CBIC
3	Govt. of India	Shri D.P. Nagendra Kumar	Member (GST), CBIC
4	GST Council Sectt.	Dr. C.S. Mohapatra	Additional Secretary, GST Council
5	Govt. of India	Shri Vivek Aggarwal	Additional Secretary, DoR
6	Govt. of India	Shri Rajesh Malhotra	DG (Media & Comm.), PIB
7	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
8	Govt of India	Shri Sanjay Mangal	Principal Commissioner (GST PW), CBIC
9	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU
10	GSTN	Shri Manish Kumar Sinha	CEO
11	GSTN	Shri Dheeraj Rastogi	EVP (Support) & SVP (Services)
12	GST Council Sectt.	Ms Ashima Bansal	Joint Secretary
13	Govt. of India	Shri S. S. Nakul	PS to Minster of Finance and Corporate Affairs
14	Govt. of India	Sernya Bhutia	First PA to FM
15	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
16	Govt. of India	Shri N. Gandhi Kumar	Director (State Tax), DoR
17	Govt. of India	Shri Amaresh Kumar	Additional Commissioner, GST PW, CBIC
18	Govt. of India	Shri Pramod Kumar	Director, TRU
19	Govt. of India	Shri Syed Wasif Haider	OSD, TRU
20	Govt. of India	Shri D. P. Misra	OSD to Chairman, CBIC
21	Govt. of India	Rakesh Dahiya	Joint Commissioner
22	Govt. of India	Gaurav Singh	Deputy Secretary, TRU

23	Govt of India	Shri Dibyalok	Technical Officer, TRU
24	Govt of India	Shri Amit Samdariya	Deputy Commissioner, GST PW, CBIC
25	GST Council Sectt.	Shri Kshitendra Verma	Director
26	GST Council Sectt.	Shri Harish Kumar	Deputy Secretary
27	GST Council Sectt.	Shri Krishna Koundinya	Under Secretary
28	GST Council Sectt.	Shri Naveen Agrawal	Under Secretary
29	GST Council Sectt.	Shri Joginder Singh Mor	Under Secretary
30	GST Council Sectt.	Shri Adesh Nayak	Superintendent
31	GST Council Sectt.	Shri Naveen Kumar	Superintendent
32	GST Council Sectt.	Shri Irfan Jakir	Superintendent
33	GST Council Sectt.	Shri Sachin Goel	Superintendent
34	GST Council Sectt.	Shri Manoj Kumar	Superintendent
35	GST Council Sectt.	Shri Dharambir	Superintendent
36	GST Council Sectt.	Shri Rakesh Joshi	Inspector
37	GST Council Sectt.	Shri Pankaj Bhardwaj	Inspector
38	GST Council Sectt.	Shri Vijay Malik	Inspector
39	GST Council Sectt.	Shri Rohit Sharma	Inspector
40	Andhra Pradesh	Shri Mukhesh Kumar Meena	Secretary (CT) Finance
41	Andhra Pradesh	Shri J V M Sarma	Joint Commissioner State Taxes
42	Andhra Pradesh	Shri Chandra Obul Reddy	OSD to Finance Minister
43	Arunachal Pradesh	Shri Sangeet Dubey	Deputy Resident Commissioner
44	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax
45	Bihar	Shri Arun Kumar Mishra	Special Secretary, Commercial Taxes
46	Chandigarh	Shri Vinay Partap Singh	Excise & Taxation Commissioner
47	Chandigarh	Shri Randhir Singh	Assistant Excise & Taxation Commissioner

48	Chhattisgarh	Shri Toran Lal Dhruw	Additional Commissioner of State Tax
49	Chhattisgarh	Shri Tarun Kumar Kiran	Deputy Commissioner of State Tax
50	Delhi	Shri Ankur Garg	Commissioner, State Tax
51	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner (Policy), State Tax
52	Gujarat	Shri J. P. Gupta	Principal Secretary, Finance Department
53	Gujarat	Shri Milind Torawane	Secretary(Economic Affairs, Finance Department) & Chief Commissioner of State Tax
54	Haryana	Shri Anurag Rastogi	Additional Chief Secretary, Excise & Taxation
55	Haryana	Shri Sameer Yadav	DETC, Gurgaon
56	Himachal Pradesh	Shri Yunus	Commissioner of State Tax and Excise
57	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise
58	Himachal Pradesh	Shri Rajesh Bhardwaj	Special Private secretary to honble industries minister HP
59	Jammu and Kashmir	Shri Showkat Aijaz Bhat	Commissioner, State Taxes
60	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner, State Taxes
61	Jharkhand	Shri Ramchandra Prasad Barnwal	Additional Commissioner, State Tax
62	Jharkhand	Shri Brajesh Kumar	State Tax Officer, CT
63	Karnataka	Smt. C. Shikha	Commissioner of Commercial Taxes
64	Karnataka	Smt. C. Pushpalatha	Additional Commissioner of Commercial Taxes (Policy & Law)
65	Kerala	Shri Rajesh Kumar Singh	Additional Chief Secretary (Finance & Taxes Department)
66	Kerala	Shri Abraham Renn S.	Additional Commissioner of State Tax

67	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner, Commercial Taxes
68	Madhya Pradesh	Shri S. N. Maravi	Director, Commercial Taxes
69	Madhya Pradesh	Shri Manoj Kumar Choubey	Deputy Commissioner, Commercial Taxes
70	Maharashtra	Shri Rajiv Mittal	Commissioner of State Tax
71	Mizoram	Shri Vanlalzuala	Deputy Resident Commissioner
72	Nagaland	Shri C Lima Imsong	Joint Commissioner of State Taxes
73	Odisha	Shri Pramod Kumar Mohanty	Special Commissioner, Commercial Taxes & GST
74	Odisha	Shri Nihar Ranjan Nayak	Additional Commissioner, CT & GST (Policy)
75	Puducherry	Shri. B. Balamurthy	Asst.CTO
76	Punjab	Shri V.K Garg	Advisor (Financial Resources)
77	Punjab	Shri A.Venu Prashad	Additional Chief Secretary(Taxation)
78	Rajasthan	Shri T. Ravikanth	Secretary, Finance(Revenue)
79	Rajasthan	Shri Ravi Jain	Chief Commissioner, State Tax
80	Sikkim	Shri J.D.Bhutia	Commissioner cum Secretary Commercial Taxes
81	Tamil Nadu	Shri K Phannidra Reddy	Additional Chief Secretary/Commissioner, CTD
82	Tamil Nadu	Shri N. Muruganandam	Additional Chief Secretary, Finance
83	Telangana	Shri K. Rama Krishna Rao	Special Chief Secretary for Finance
84	Telangana	Gaurav Uppal	Resident Commissioner
85	Telangana	Smt Neetu Prasad	Commissioner of Commercial Taxes
86	Telangana	Smt K. Roopa Sowmya	Deputy Commissioner(ST)
87	Tripura	Shri Akinchan Sarkar	Additional Secretary, Finance (OSD of the Hon'ble Deputy Chief Minister,
88	Uttarakhand	Dr Ahmed Iqbal	Commissioner, State Tax

89	Uttar Pradesh	Shri Sanjiv Mittal	Additional Chief Secretary, State Tax
90	Uttar Pradesh	Smt. Ministhy S.	Commissioner, Commercial Tax
91	Uttar Pradesh	Sanjay Kumar Pathak	Dy Secy, State Tax
92	Uttar Pradesh	Amit Pandey	PS to FM
93	West Bengal	Shri Khalid Aizaz Anwar	Commissioner, Commercial Taxes
94	West Bengal	T. K. Pathak	Jt Secy & Priv. Secy to Minister

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 45th meeting held on 17.09.2021, the GST Council had ratified all the Notifications, Circulars, and Orders issued up to 08.09.2021.

2. In this respect, the following Notifications, Circulars and Orders issued after 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. 35/2021-Central Tax dated 24.09.2021	Seeks to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017.
		2. Notification No. 36/2021-Central Tax dated 24.09.2021	Seeks to amend Notification No. 03/2021 dated 23.02.2021.
		3. Notification No. 37/2021-Central Tax dated 01.12.2021	Seeks to make amendments (Ninth Amendment, 2021) to the CGST Rules, 2017.
		4. Notification No. 38/2021-Central Tax dated 21.12.2021	Seeks to bring sub-rule (2) and sub-rule (3), clause (i) of sub-rule (6) and sub-rule (7) of rule 2 of the CGST (Eighth Amendment) Rules, 2021 into force w.e.f. 01.01.2022.
		5. Notification No. 39/2021-Central Tax dated 21.12.2021	Seeks to notify 01.01.2022 as the date on which provisions of section 108, 109 and 113 to 122 of the Finance Act, 2021 shall come into force.
		6. Notification No. 40/2021-Central Tax dated 29.12.2021	Seeks to make amendments (Tenth Amendment, 2021) to the CGST Rules, 2017
		7. Notification No. 01/2022-Central Tax dated 24.02.2022	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 20 Cr from 01 st April 2022

		8. Notification No. 03/2022-Central Tax dated 31.03.2022	Seeks to amend notification no. 10/2019-Central Tax to implement special composition scheme for Brick Kilns, as recommended by GSTC in 45 th meeting
		9. Notification No. 04/2022-Central Tax dated 31.03.2022	Seeks to amend notification no. 14/2019-Central Tax to implement special composition scheme for Brick Kilns, as recommended by GSTC in 45 th meeting
		10. Notification No. 05/2022-Central Tax dated 17.05.2022	Seeks to extend the due date of filing FORM GSTR-3B for the month of April, 2022
		11. Notification No. 06/2022-Central Tax dated 17.05.2022	Seeks to extend the due date of payment of tax, in FORM GST PMT-06, for the month of April, 2022 by taxpayers who are under QRMP scheme
		12. Notification No. 07/2022-Central Tax dated 26.05.2022	Seeks to waive off late fee under section 47 for the period from 01.05.2022 till 30.06.2022 for delay in filing FORM GSTR-4 for FY 2021-22
		13. Notification No. 08/2022-Central Tax dated 07.06.2022	Seeks to provide waiver of interest for specified electronic commerce operators for specified tax periods
	Central Tax (Rate)	1. Notification No. 06/2021-Central Tax (Rate), dated 30.09.2021	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 45th meeting held on 17.09.2021
		2. Notification No. 07/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 12/2017- Central Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021.

		3. Notification No. 08/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 1/2017- Central Tax (Rate)
		4. Notification No. 09/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 2/2017- Central Tax (Rate)
		5. Notification No. 10/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 4/2017- Central Tax (Rate)
		6. Notification No. 11/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 39/2017- Central Tax (Rate)
		7. Notification No. 12/2021-Central Tax (Rate), dated 30.09.2021	Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021
		8. Notification No. 13/2021-Central Tax (Rate), dated 27.10.2021	Seeks to amend Notification No 1/2017- Central Tax (Rate) dated 28.06.2017
		9. Notification No. 14/2021-Central Tax (Rate), dated 18.11.2021	Seeks to further amend notification No. 01/2021-Central Tax (Rate) dated 28- 06-2021
		10. Notification No. 15/2021-Central Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 11/2017- Central Tax (Rate) dated 28.06.2017
		11. Notification No. 16/2021-Central Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 12/2017- Central Tax (Rate) dated 28.06.2017

		12. Notification No. 17/2021-Central Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 17/2017- Central Tax (Rate) dated 28.06.2017
		13. Notification No. 18/2021-Central Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 1/2017- Central Tax (Rate) dated 28.06.2017
		14. Notification No. 19/2021-Central Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 2/2017- Central Tax (Rate) dated 28.06.2017
		15. Notification No. 20/2021-Central Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 21/2018- Central Tax (Rate) dated 26.07.2018
		16. Notification No. 21/2021-Central Tax (Rate), dated 31.12.2021	Seeks to supersede notification 14/2021- CT(R) dated 18.11.2021 and amend Notification No 1/2017- CT (Rate) dated 28.06.2017
		17. Notification No. 22/2021-Central Tax (Rate), dated 31.12.2021	Seeks to supersede notification 15/2021- CT(R) dated 18.11.2021 and amend Notification No 11/2017- CT (Rate) dated 28.06.2017
		18. Notification No. 01/2022-Central Tax (Rate), dated 31.03.2022	Seeks to amend notification No. 1/2017-Central Tax (Rate)
		19. Notification No. 02/2022-Central Tax (Rate), dated 31.03.2022	Seeks to provide for a concessional rate on intra state supply of bricks conditional to not availing the ITC, as recommended by 45 GSTC
Notifications under UTGST Act / UTGST Rules	Union Territory Tax	1. Notification No. 01/2022-Union Territory Tax, dated 31.03.2022	Seeks to amend notification no. 02/2019-Union Territory Tax to implement special composition scheme for Brick Kilns, as recommended by GSTC in 45 th meeting

		2. Notification No. 02/2022-Union Territory Tax, dated 31.03.2022	Seeks to amend notification no. 02/2017-Union Territory Tax to implement special composition scheme for Brick Kilns, as recommended by GSTC in 45 th meeting
	Union Territory Tax (Rate)	1. Notification No. 06/2021-Union Territory tax (rate), dated 30.09.2021	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 45th meeting held on 17.09.2021.
		2. Notification No. 07/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 12/2017- Union Territory Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021.
		3. Notification No. 08/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 1/2017- Union territory Tax (Rate)
		4. Notification No. 09/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 2/2017- Integrated Tax (Rate)
		5. Notification No. 10/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 4/2017- Integrated Tax (Rate)
		6. Notification No. 11/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 40/2017- Integrated Tax (Rate)
		7. Notification No. 12/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021
		8. Notification No. 13/2021-Union Territory tax (rate),	Seeks to amend Notification No 1/2017- Union territory Tax (Rate) dated 28.06.2017.

		dated 27.10.2021	
		9. Notification No. 14/2021-Union Territory tax (rate), dated 18.11.2021	Seeks to further amend notification No. 01/2021-Union Territory Tax (Rate) dated 28-06-2021.
		10. Notification No. 15/2021-Union Territory tax (rate), dated 18.11.2021	Seeks to amend Notification No 11/2017- Union territory Tax (Rate) dated 28.06.2017.
		11. Notification No. 16/2021-Union Territory tax (rate), dated 18.11.2021	Seeks to amend Notification No 12/2017- Union territory Tax (Rate) dated 28.06.2017.
		12. Notification No. 17/2021-Union Territory tax (rate), dated 18.11.2021	Seeks to amend Notification No 17/2017- Union territory Tax (Rate) dated 28.06.2017
		13. Notification No. 18/2021-Union Territory tax (rate), dated 28.12.2021	Seeks to amend Notification No 1/2017- Union territory Tax (Rate) dated 28.06.2017
		14. Notification No. 19/2021-Union Territory tax (rate), dated 28.12.2021	Seeks to amend Notification No 2/2017- Union territory Tax (Rate) dated 28.06.2017
		15. Notification No. 20/2021-Union Territory tax (rate), dated 28.12.2021	Seeks to amend Notification No 21/2018- Union territory Tax (Rate) dated 26.07.2018
		16. Notification No. 21/2021-Union Territory tax (rate), dated 31.12.2021	Seeks to supersede notification 14/2021- UTT(R) and amend Notification No 1/2017- Union territory Tax (Rate) dated 28.06.2017

		17. Notification No. 22/2021-Union Territory tax (rate), dated 31.12.2021	Seeks to supersede notification 15/2021- UTT(R) and amend Notification No 11/2017- Union territory Tax (Rate) dated 28.06.2017.
		18. Notification No. 01/2022-Union Territory tax (rate), dated 31.03.2022	Seeks to amend notification No. 1/2017-Union Territory Tax (Rate)
		19. Notification No. 02/2022-Union Territory tax (rate), dated 31.03.2022	Seeks to provide for a concessional rate on intra state supply of bricks conditional to not availing the ITC, as recommended by GSTC in 45 th meeting
Notifications under IGST Act / IGST Rules	Integrated Tax (Rate)	1. Notification No. 06/2021-Integrated Tax (Rate), dated 30.09.2021	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 45th meeting held on 17.09.2021.
		2. Notification No. 07/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 09/2017- Integrated Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021.
		3. Notification No. 08/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 1/2017- Integrated Tax (Rate)
		4. Notification No. 09/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 2/2017- Integrated Tax (Rate)
		5. Notification No. 10/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 4/2017- Integrated Tax (Rate)

		6. Notification No. 11/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 40/2017- Integrated Tax (Rate)
		7. Notification No. 12/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021
		8. Notification No. 13/2021-Integrated Tax (Rate), dated 27.10.2021	Seeks to amend Notification No 1/2017- Integrated Tax (Rate) dated 28.06.2017.
		9. Notification No. 14/2021-Integrated Tax (Rate), dated 18.11.2021	Seeks to further amend notification No. 01/2021-Integrated Tax (Rate) dated 28-06-2021.
		10. Notification No. 15/2021-Integrated Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 8/2017- Integrated Tax (Rate) dated 28.06.2017.
		11. Notification No. 16/2021-Integrated Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 9/2017- Integrated Tax (Rate) dated 28.06.2017.
		12. Notification No. 17/2021-Integrated Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 14/2017- Integrated Tax (Rate) dated 28.06.2017.
		13. Notification No. 18/2021-Integrated Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 1/2017- Integrated Tax (Rate) dated 28.06.2017
		14. Notification No. 19/2021-Integrated Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 2/2017- Integrated Tax (Rate) dated 28.06.2017

		15. Notification No. 20/2021-Integrated Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 22/2018- Integrated Tax (Rate) dated 26.07.2018
		16. Notification No. 21/2021-Integrated Tax (Rate), dated 31.12.2021	Seeks to supersede notification 14/2021- IT(R) dated 18.11.2021 and amend Notification No 1/2017- Integrated Tax (Rate) dated 28.06.2017
		17. Notification No. 22/2021-Integrated Tax (Rate), dated 31.12.2021	Seeks to supersede notification 15/2021- IT(R) dated 18.11.2021 and amend Notification No 8/2017- Integrated Tax (Rate) dated 28.06.2017
		18. Notification No. 01/2022-Integrated Tax (Rate), dated 31.03.2021	Seeks to amend notification No. 1/2017-Integrated Tax (Rate)
		19. Notification No. 02/2022-Integrated Tax (Rate), dated 31.03.2021	Seeks to provide for a concessional rate on interstate supply of bricks conditional to not availing the ITC, as recommended by GSTC in 45 th meeting
Circulars under CGST Act		1. Circular No. 159/15/2021-GST dated 20.09.2021	Clarification on doubts related to scope of “Intermediary”
		2. Circular No. 160/16/2021-GST dated 20.09.2021 along with corrigendum	Clarification in respect of certain GST related issues
		3. Circular No. 161/17/2021-GST dated 20.09.2021	Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017
		4. Circular No. 162/18/2021-GST dated 25.09.2021	Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act.
		5. Circular No. 163/19/2021-GST dated 06.10.2021	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council

		in its 45th meeting held on 17th September, 2021 at Lucknow-reg.
	6. Circular No. 164/20/2021-GST dated 06.10.2021	Clarifications regarding applicable GST rates & exemptions on certain services.
	7. Circular No. 165/21/2021-GST dated 17.11.2021	Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020
	8. Circular No. 166/22/2021-GST dated 17.11.2021	Circular on Clarification on refund related issues
	9. Circular No. 167/23/2021-GST dated 17.12.2021	GST on service supplied by restaurants through e-commerce operators-reg.
	10. Circular No. 168/24/2021-GST dated 30.12.2021	Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli

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

4. It is further informed that out of the Notifications and Circulars as detailed in para 2 above, certain Notifications and Circulars have been issued to implement the decisions of the GST Implementation Committee (GIC) taken during the period since the 45th meeting of the Council. The details of such decisions and relevant Notifications and Circulars issued to implement such decisions of the GIC are enclosed as **Annexure** to this Agenda Note.

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

I. The GST Implementation Committee (GIC) took certain decisions between 45th GST Council Meeting and 18.06.2022. Due to the urgency involved, most of the decisions were taken after obtaining approval by circulation amongst GIC members. The details of the decisions taken are given below:

1. Decisions in the 41st Meeting of the GIC held on 25th October, 2021

1.1. Agenda 1: Suspension of registration under sub-rule (2A) of rule 21A of the CGST Rules, 2017

a. In the agenda note, it was mentioned that Vide Notification No. 94/2020-Central Tax dated 22.12.2020 sub-rule (2A) had 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.”*

b. It was highlighted that in terms of above rule, centralized suspension of registration through portal had been carried out on two previous occasions.

c. It was further proposed that **to bring in greater discipline amongst the taxpayers, registration of the taxpayers, who have not filed returns for 6 or more months, might be placed under suspension, centrally through the portal, on 1st of every month, on regular basis, irrespective of the turnover.** It was also proposed to have a system of automatic revocation of suspension provisionally, once all the pending returns are filed on the portal by the taxpayer.

d. It was stated that as per provisions of Section 29 of CGST Act 2017, the registration of a registered person, who does not file 6 or more monthly returns, or two or more quarterly returns, could be cancelled/ placed under suspension. Besides, the registration of the registered person could be suspended centrally through the common portal, as per provisions of Rule 21A(2A) of CGST Rules 2017, based on the criteria as recommended by the Council. Till now, such centralized suspension has been done on two occasions, with specific recommendation on both the occasions. **There may be a**

requirement of such centralized suspension through the portal, in such cases of default in return filing of returns for 6 or more months, on regular basis.

e. Since such centralized suspension of registration for non-compliance in terms of clause (b) or clause (c) of sub-section (2) of section 29, irrespective of turnover, may involve a large number of registrants, and may create operational difficulty in handling such large number of cases of cancellation by tax officers, the proposal of GSTN regarding a system of automatic revocation of suspension provisionally, once all the pending returns are filed on the portal by the taxpayer, merits consideration. Presently, such type of automatic unblocking of e-way bill and automatic unblocking of GSTR-1 on portal, without intervention of tax officers, is being done on filing of the defaulting returns by the taxpayers. **The said proposal of GSTN for automatic revocation of suspension has been deliberated by the Law Committee in its meeting dated 08.10.2021 and it was recommended to make relevant amendment in rule 21A(4) of the CGST Rules, such that, on filing of the pending returns, automatic revocation of suspension can be done by GST portal.**

f. An agenda for amendment in CGST Rules for **automatic revocation of suspension through the portal and procedure thereof, would be brought before GIC/ GST Council in the due course, in consultation with GSTN.** In the meantime, till such a functionality is developed by GSTN and the proposed rule is approved by GST Council and is notified, **GIC may like to recommend**, on a general basis, that the registration of the taxpayers, who have not filed 6 or more GSTR-3Bs for 6 or more months, above a specified threshold turnover, as may be recommended by the GIC, may be suspended on common portal as per Rule 21A(2A) of CGST Rules, on 1st of each of the months, on regular basis, without need of specific recommendation of GIC on each occasion separately.

g. **Decision:** The GIC approved the proposal that the registrations of the taxpayers, who have not filed GSTR 3B returns for 6 or more months, which is liable for cancellation under section 29 of CGST Act, may be suspended centrally through the GST portal on 1st of every month, under sub-rule (2A) of Rule 21A of CGST Rules, 2017, based on their turnover as below:

(A) Taxpayers where six or more monthly GSTR-3Bs have not been furnished and their turnover/ estimated turnover (AATO) in preceding financial year is more than Rs. 50 lakhs.

(B) Taxpayers where quarterly GSTR-3Bs have not been furnished for two or more quarters and their turnover/ estimated turnover (AATO) in preceding financial year is more than Rs.50 lakhs. Further, in case GSTN is able to generate the AATO for current year also, the decision may be read as “AATO in preceding FY or current Financial Year”.

h. **Implementation status :** The decision of GIC has been implemented and in first week of the month, the suspension activity of such taxpayers is done whose turnover/ estimated turnover (AATO) in preceding financial year is more than ₹ 50 lakh on the same PAN. The details of suspension activities are shared by GSTN with all States/ CBIC as and when this exercise is done.

1.2 Agenda 2 : Issuance of clarification on certain refund related issues

In the agenda note, it was stated that various representations had been received from the field formations and trade/industry seeking clarification on some of the issues relating to GST refunds which needs to be clarified to ensure uniformity in the implementation of the provisions of law and rules across the field formations. The issues are stated as under:

a. Refund under the category "Excess balance in Cash Ledger"

In this, it was stated that representations had been received from the trade/industry wherein they have raised concern regarding rejection of their refund claim pertaining to excess balance in electronic cash ledger on grounds of being time barred or excess cash balance being accumulated on account of credit of TDS/ TCS amount or non -submission of declarations and accordingly, request had been made for issuance of clarification regarding refunds pertaining to excess balance in electronic cash ledger in order to ensure the uniformity in the implementation of the provision of the rule across field formations.

b. Issue of time bar

i. Sub-section (1) of section 54 of the CGST Act, 2017 provides that an application for refund can be filed before the expiry of two years from the relevant date. Many refund claims pertaining to refund of excess balance in electronic cash ledger are being rejected on the ground of refund claim being time barred in terms of provision of sub-section (1) of section 54. The issue was also referred by the State of Gujarat during the Law Committee meeting held on 08.09.2021 wherein they informed that in some cases, field officers are rejecting refund of balance in the electronics cash ledger, by claiming that the refund claims are time barred, and therefore, clarification is required in respect of the same.

ii. Here, it would be pertinent to submit that the claim for refund of excess balance in electronic cash ledger, in accordance with the provisions of sub-section (6) of section 49, is to be made in accordance with the proviso to the sub-section (1) of section 54. Sub-section (6) of section 49 of CGST Act inter alia provides that the balance in the electronic cash ledger, after payment of tax, interest, penalty, fee or any other amount payable under the CGST Act or CGST Rules, may be refunded in accordance with the provisions of section 54. Sub-section (1) of section 54 originally envisaged that refund of any balance in electronic cash ledger, in accordance with the provisions of sub-section (6) of section 49, would operate through the return filing mechanism. The scheme of refund in such cases was intended to be granted to the registered person automatically through filing of the return, without intervention of the tax office, and without need of filing a separate claim for refund. It is, therefore, evident that the scheme of refund in such cases did not provide for any check about time limit, within which the return can be filed, including the time limit specified as per sub-section (1) of section 54.

iii. It was also mentioned that even explanation (2) under section 54, where "relevant date" had been defined, does not cover any situation covering such refund claims of excess cash balance. Clause (h) of explanation 2 under section 54 mentions date of payment of tax, as relevant date. However, the amount deposited in electronic cash ledger is in nature of deposit only and had not yet assumed nature of "tax". Only after debit of an amount from electronic cash ledger, it assumes nature of tax/ interest/ fee/ penalty, etc. Accordingly, refund of excess cash balance in electronic cash ledger is not covered in definition of "relevant date", and it is clear that no time limit had been prescribed in section 54 in respect of refund claims on such amount of excess cash balance.

iv. However, as GSTR-3 return mechanism which provided for such refund of excess cash balance could not be implemented, such refunds of excess cash balance in electronic cash ledger are being claimed through normal refund route of filing refund applications in FORM RFD-01/ 01A. Due to this departure, the proper officers for sanction of refund are under the impression that all provisions, which are applicable to a normal refund claim, shall be invariably applicable in such cases of refund also. Therefore, if approved, a clarification might be issued clarifying that the condition of filing of refund claim before the expiry of two years from the relevant date, is not applicable in cases of refund of excess balance in electronic cash ledger, **as the amount available in electronic cash ledger is not akin to tax but it is in nature of deposit.** The issue was also discussed in LC wherein it was decided that

though there does not appear to be any ambiguity that no time limit is applicable in respect of such refund claims. However, the same may be clarified through a circular.

c. Submission of Certification/Declaration under Rule 89(2)(l) or 89(2)(m)

i. The question of passing on the burden of tax to the customer would only arise in cases where the refund of tax paid was claimed. As stated above, the amount available in electronic cash ledger was not akin to tax but it was in nature mere deposit, which was lying with the government, and therefore, the question of passing on the burden of tax in such cases to any other person does not arise. Therefore, any demand for furnishing of certification/declaration under Rule 89(2)(l) or 89(2)(m) is unjustifiable.

ii. The proposal before the committee was that a clarification may be issued stating that furnishing of certification/declaration under Rule 89(2)(l) or 89(2)(m) is not required in cases of excess balance in electronic cash ledger and no such refund claims shall be rejected on the grounds of non-furnishing of such certification/declaration.

d. Refund of TDS/TCS deposited in the electronic cash ledger

i. Representations had been received that the tax officers, in some cases, are holding/ rejecting refund claims of the taxpayers for excess cash balance in electronic cash ledger, on the ground that the said amount of excess cash balance includes the amount of TDS/ TCS credited to electronic cash ledger, and that the said amount of TDS/ TCS is required to be utilized only for discharging their tax liability and cannot be refunded to the taxpayer as excess cash balance.

ii. In this regard, it is submitted that the intention behind bringing the provisions of TDS/TCS in the GST Law was to keep a track of the supplies being made by the suppliers to Government Department/ PSUs/ Statutory Bodies, etc and through E-commerce operator, and to ensure that such supplies are declared by the suppliers correctly in their outward supplies. The intention of the TDS/TCS provisions is not to collect tax on such supplies but to ensure that supplies made through E-commerce operator or to Government Departments etc. are duly reported. However, the tax liability of the supplies made by such registered persons, can be discharged by the concerned registered persons, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per their choice, and availability of balance in the said ledgers.

iii. In view of the above, the view being taken by some of the field formations that the amount of TDS/ TCS credited to their electronic cash ledger, can only be utilized for payment of tax liability by the registered persons, and no refund of such amount can be claimed as excess cash balance in electronic cash ledger, after discharge of the due tax liability, was without any basis. Therefore, refund of TDS/TCS deposited in electronic cash ledger should not be rejected merely on the ground that such TDS/ TCS amount needs to be utilised only for tax payment. Accordingly, if approved, a clarification may be issued stating that refund of TDS/TCS deposited in electronic cash ledger may be dealt in a manner similar to other refunds of excess balance in cash ledger.

e. Relevant date in cases of refund by recipient of deemed export.

i. While discussing the agenda regarding amendment in Section 54 of the CGST Act, 2017 with respect to insertion of provision relating to relevant date for zero-rated supplies made to SEZ Developer/Unit on 08.09.2021, a reference was made by State of Gujarat wherein they had raised doubts whether relevant date for the refund of tax paid on supplies regarded as deemed export is to be determined as

per clause (b) of Explanation (2) under Section 54 of CGST Act, 2017 in those cases also where the refund claim is filed by the recipient.

ii. Clause (b) of Explanation (2) under Section 54 of the CGST Act, 2017, provides for relevant date for refund on account of supply of goods regarded as deemed export, which is reproduced below:

“(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;”

On perusal of the above, it can be seen that the aforesaid provision does not refer to supplier or recipient but it only states that in case of supply of goods regarded as deemed export, the relevant date would be the date on which return relating to such supplies is furnished.

iii. Further, reference was drawn to third proviso to sub-rule (1) of rule 89 which provides that the refund on account of supply of goods regarded as deemed exports might be filed by either the recipient or the supplier. The relevant rule is reproduced below:

“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”*

iv. In view of the above, it was stated that Clause (b) of Explanation (2) under Section 54 would cover filing of refund by both supplier and recipient. It was also said that the issue was also discussed in LC wherein it was decided that there is no doubt with respect to applicability of clause (b) of the Explanation (2) of Section 54 in case of refund by recipient of deemed export supply and the same may be clarified through a circular.

v. It was mentioned that doubt had been raised that even if clause (b) of Explanation (2) under Section 54 covers filing of refund by both supplier and recipient, whether the date of filing return in clause (b) would be the date on which return is filed by supplier or the date of filing of return by the recipient. In this regard, it would be imperative to mention that in case of refund on account of supplies regarded as deemed export, the refund of tax paid was available i.e. the refund in case of deemed export supply would be available only after the tax on such deemed export supply has been paid to the Government. Therefore, before refunding the tax paid on deemed export supply, it has to be ascertained/ensured that tax on such supplies had actually paid and as the tax on any supply was to be paid by the supplier, thus, relevant date, even when the refund on account of deemed export supplies was filed by recipient, would be the date of filing of return by the supplier. Further, it was the supplier who is required to report the supplies in his return and not the recipient. Therefore, the relevant date would be the date of filing of return by the supplier.

vi. The proposal before GIC was that it may be clarified that cases of refund by recipient of deemed export would also be covered under clause (b) of explanation (2) of section 54 and the relevant date in such cases would be date of filing of return by the supplier of the goods regarded as deemed export.

f. Lastly, it was stated that an agenda note along with the draft circular for clarifying the aforesaid refund related issues was placed before the Law Committee in its meeting held on 08.10.2021 wherein the Law Committee approved the same.

g. **Decision:** The GIC approved all the proposals pertaining to issuance of clarification on refunds under the category “excess balance in cash ledger” and the issue of relevant date in cases of refund claim by recipient of deemed export.

h. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Circular No. 166/22/2021-GST dated 17.11.2021.

1.3 Agenda 3 : Notifying changes in FORM GST DRC-03

a. In the agenda note it was stated that Law Committee, in its meeting held on 09.09.2020, had recommended changes in various DRC forms and in FORM GST ASMT-16, pertaining to insertion of ‘Fee’ column in these Forms. Based on the recommendations of the 42nd meeting of the GST Council, these changes were notified vide Notification No. 79/2020-GST dated 15.10.2020 in the relevant forms. However, with respect to FORM GST DRC-03, it was decided in the said Law Committee meeting that GSTN would prepare revised format of FORM GST DRC-03 by changing the labels at relevant places. It was further stated that GSTN had now submitted the revised format of FORM GST DRC-03. Further, GSTN had also informed that since DRC-03 with late fee modification is UAT signed off and likely to be rolled out in production, the new format might be notified as soon as possible. The proposal before GIC was to approve the new format of FORM GST DRC-03.

b. **Decision:** The GIC approved the proposal for notifying changes in the FORM GST DRC-03 as proposed, with the modification that the word ‘enforcement’ to be replaced with the word ‘inspection’.

c. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Notification No. 37/2021-Central Tax dated 01.12.2021.

1.4 Agenda 4 : 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

a. In the agenda note attention was invited to the Notification No. 14/2020- Central Tax dated 21st March 2020, as amended by notification no 71/2020- Central Tax dated 30th September 2020 as per which an invoice issued by a registered person, whose aggregate turnover in any of the previous financial year exceeds five hundred crore rupees, to an unregistered person, is required to have a dynamic Quick Response (QR) code.

b. Vide Circular No. 156/12/2021 dated 21st June 2021, clarifications had been issued on the various issues regarding applicability of Dynamic QR code on B2C invoices. Vide S. No 4 of the said Circular, it had been clarified that QR code shall not be required in case of services effected to a recipient outside India even where the place of supply of such service is in India (i.e., such supply does not qualify as

export of service as per GST law), and payment was received by supplier in foreign currency, through RBI approved mediums.

Relevant extract of the circular is reproduced below:

In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange , through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?	No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums , such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier
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c. It was further highlighted to GIC that representations had been received that in some cases, though the service recipient was located outside India, and place of supply of the service was in India, the payment was received by the service provider located in India not in foreign exchange, but through other modes approved by RBI, like Special Non-Resident Rupee Account (SNRR A/c) or similar other rupee-based account. In such cases, the supplier would not be fulfilling the condition specified in S. No. 4 of the Circular No. 156/12/2021 dated 21st June 2021, and accordingly, would be required to print dynamic QR code on the invoice. It had been represented that relaxation from printing dynamic QR code on the invoices in such cases should be available if the payment was received through any RBI approved mode of payment, and not necessarily in foreign exchange.

d. It was stated by GSTPW, CBIC that the matter had been examined and it was observed that such issue may be faced by any entity, which receives payments from recipients outside India through RBI approved mediums but NOT in foreign exchange necessarily, and where the place of supply of service was in India as per the provisions of the IGST Act. As per present wording of S. No. 4 of Circular No. 156/12/2021 dated 21st June 2021, such suppliers would not be benefitted by relaxation granted from printing of dynamic QR code on the invoices, as the payment was not received in foreign exchange. The intention of clarification as per S. No. 4 in the said circular was not to deny relaxation in such cases, where the payment is received by the supplier as per RBI approved mode, other than foreign exchange.

e. Accordingly, it was proposed before GIC that Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21st June, 2021 might be substituted by the following entry:

4. " In cases, where receiver of services is located outside India, and payment is being received by the supplier of services through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the	No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI , such invoice may be issued without having a Dynamic QR Code, as
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Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?	such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier."
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f. It was also informed by GSTPW, CBIC that the Law Committee in its meeting held on 08.10.2021 had approved the issuance of a Circular to clarify the aforesaid issue by substituting the Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21st June 2021.

g. **Decision:** The GIC approved the proposal to issue a clarification in respect of applicability of Dynamic QR Code as proposed above.

h. **Implementation status :** The recommendation of GIC has been implemented by way of issuance of Circular No. 165/21/2021-GST dated 17.11.2021.

2. Decision of GIC by Circulation on 17th November, 2021 on notifying changes in Rule 137 of CGST Rules, 2017.

a. In the agenda note received from GSTPW, CBIC, it was mentioned that Anti-profiteering provisions were introduced for the first time in the indirect tax regime of the country and Section 171 of the Central Goods & Service Tax (CGST) Act, 2017 deals with anti-profiteering. As per Section 171 of CGST Act, read with Rule 122 and Rule 137 of CGST Rules, 2017, National Anti-Profiteering Authority (NAA) has been constituted to examine whether input tax credit availed by the registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in price of goods or services or both supplied by him and whether the benefit of reduced rate of tax or the input tax credit has been passed to recipient by way of commensurate reduction in prices. In case NAA finds any profiteering by the registered person, it may order inter alia reduction in prices, commensurate benefit to recipient, impose penalty on the registered person and cancellation of registration of the registered person. In terms of Rule 137 of the CGST Rules, 2017, the tenure of NAA is only four years, from the date on which the Chairman enters upon his office, unless the Council recommends otherwise.

b. The proposal before the GIC was that the tenure of National Anti-profiteering authority as per the present Rule 137 is expiring on 30.11.2021. The matter of extension of tenure of National Anti-Profiteering Authority (NAA) was deliberated by GST Council in its 45th Meeting held on 17th September, 2021. The Council recommended extending the tenure of NAA by one year beyond 30.11.2021.

c. **Decision:** The members of the GIC had approved the above proposal.

d. **Implementation status :** The recommendation of GIC has been implemented by way of issuance of Notification No. 37/2021-Central Tax dated 01.12.2021.

3. Decision of GIC by Circulation on 29th November, 2021 on GST on service supplied by restaurants through E-Commerce operators

- a. In the agenda note it was stated that the GST Council in its 45th meeting held on 17th September, 2021 recommended to notify “Restaurant Service” under section 9(5) of the CGST Act, 2017 w.e.f 01.01.2022, i.e. to make Electronic Commerce Operators (ECOs) liable to pay GST on ‘restaurant service’ supplied through them. Accordingly, notification No. 17/2021 Central Tax (Rate) dated 18.11.2021 under section 9(5) of CGST Act, 2017 and corresponding notifications under IGST Act and UTGST Act have been issued which will come into force w.e.f 01.01.2022.
- b. It was further stated that certain representations have been received from ECOs such as Swiggy and Zomato requesting for clarification regarding modalities or issues related to compliance to these notifications. These issues were placed before Fitment Committee in its meeting held on 25.11.2021. After due discussion and deliberation, Fitment Committee recommended to issue a clarification on the issues raised by stakeholders. As some of the issues raised were procedural in nature, the Fitment Committee referred the draft clarification to Law Committee for its consideration. On 26.11.2021, the Law Committee deliberated upon the draft clarification including procedural aspects and made some suggestions.
- c. It was also highlighted that since the change is coming into force from 01.01.2022, it is imperative that we issue clarification expeditiously on the modalities and compliance related aspects, as it might require software up-gradation or/and other preparations by ECOs in different facets of their business to ensure smooth implementation of the notifications w.e.f 01.01.2022.
- d. Accordingly, a draft circular was prepared clarifying the following issues:

Sl No	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As ‘restaurant service’ has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.

3.	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
5.	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6.	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provides their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECO avails ITC. The ECO charges commission/fee etc for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (to say restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)
7.	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8.	Would supply of goods other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies.

		Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such services.
9.	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10.	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
11.	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc. in the GST return.	<p>A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B.</p> <p>The ECO may, on services notified under section 9 (5) of the CGST Act, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being.</p> <p>Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose.</p> <p>Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.</p>

e. **Decision:** The members of the GIC had approved the above proposal.

f. **Implementation status:** The decision of GIC was implemented by way of issuance of Circular No. 167 / 23 /2021 - GST dated 17th December, 2021.

4. Decision of GIC by Circulation on 15th & 21st December, 2021

4.1 *Agenda 1: Recording of UIN on invoices for foreign Diplomatic Missions/ UN organizations.*

a. In the agenda note, it was mentioned that Section 55 of the CGST Act, 2017 provides that the Government may, on the recommendations of the Council, by notification, specify any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of

foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them. Accordingly, vide Notification No. 16/2017- Central Tax (Rate) dated 28.06.2017, the following agencies have been notified by the GST Council under Section 55 of the CGST Act, to claim a refund of taxes paid on the notified supplies of goods or services or both received by them:

1. Any specialized agency of the United Nations Organization,
2. Any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,
3. Consulate or Embassy of foreign countries and
4. Any other person or class of persons as may be specified.

b. It was also mentioned that the agencies notified under the provisions of Section 55 of the CGST Act, 2017 for claiming refund are granted Unique Identity Number (UIN) in terms of the provisions of section 25(9) of the CGST Act, 2017 read with rule 17 of the CGST Rules, 2017. Refund for the Foreign Diplomatic Missions is given for the tax paid on their purchases based on the terms of reciprocity which are specific to countries. The refund claim is subject to such conditions and restrictions as may be prescribed.

c. Rule 95 of the CGST Rules, 2017 provides for the procedure of refund of taxes to UINs and the conditions for grant of such refund. The said rule provides as under:

Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal or otherwise either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR11. An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.

The refund of tax paid by the applicant shall be available if-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice

(b) name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant is mentioned in the tax invoice; and

The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule. Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

d. From the perusal of the sub-rule (3) of rule 95 of CGST Rules, it was noted that the refund of tax paid by the UN missions/ Embassies, etc. having UIN is available only if the UIN number of the applicant is mentioned on the tax invoice. It was also stated that the recording of UIN on the invoice is a necessary condition under rule 46 of the CGST Rules, 2017.

e. It was further stated that it had been reported that many of the suppliers/vendors had been declining supply of Goods or services to Foreign Diplomatic Missions/ UN Organizations on the premise that such UIN was not a valid GSTIN and therefore cannot be recorded in their invoices. Due to such non-compliance of recording of UIN, Foreign Diplomatic Missions/ UN Organizations weren't eligible for refund on such invoices, on which their UIN number is not recorded. Considering the difficulty faced

by Foreign Diplomatic Missions/ UN Organizations in availing refund of tax paid in respect of such invoices, it was decided to waive the requirement of recording of UIN number on the invoices for the purpose of availment of refund by the Foreign Diplomatic Missions/ UN Organizations, initially for the period 01.07.2017 to 31.03.2018 and Year 2018-19 vide Circular No. 43/17/2018-GST dated 13.04.2018 and Circular No.63/37/2018-GST dated 14.09.2018 respectively, subject to the condition that the hard copy of such invoices submitted for claim of refund shall be attested by the authorized representative of the said Foreign Diplomatic missions/ UN Organization. Subsequently, after noticing that the said difficulty still continued due to non- recording of UIN by some retailers/ suppliers in respect of supplies made to Foreign Diplomatic Missions/ UN Organizations, the waiver was continued for Year 2019-20 and 2020-21 as well (i.e., up to 31.03.2021) vide corrigendum dated 06.09.2019 to the Circular No.63/37/2018-GST dated 14.09.2018 and Circular No. 144/14/2020-GST dated 15.12.2020 respectively.

f. It was further stated that the last time, when the file for approval of GIC decision for extension of the above said waiver for the Year 2020-21, up to period 31.03.2021, was placed for approval of Hon'ble Finance Minister, Hon'ble FM while approving GIC decision for extension of waiver till March 2021, had desired that a permanent system be put in place for this.

g. In this regard, GSTN was requested to have a discussion with Ministry of External Affairs to take necessary action in this regard before the expiry of term of waiver given for non-recording of UIN on invoices i.e., by March, 2021.

h. GSTPW, CBIC stated that GSTN vide letter dated 23.07.2021 had informed that the UINs of Embassies/ Consulate don't have PAN registration in India. Therefore, the registration number metrics of UINs are different from the GSTINs of normal taxpayer. However, GST system does not validate the invoices to the UINs and declared under GSTR-11 or RFD-10 with the supplier invoices declared under GSTR-1.

i. A meeting was taken by GSTPW, CBIC on 30.11.2021 with the representatives of GSTN, MEA, Retailers Association of India and some major retailers, especially those who were dealing with UIN entities/holders, to discuss the above issue.

j. During the meeting, it was clarified by GSTN that there is no issue pertaining to any technological restriction on the portal regarding declaration of UIN by the suppliers on the invoices issued to the Embassies/ UN missions etc. Besides, there is also no validation on the portal, either in respect of the refund application filed by the Embassies/ UN missions, etc. in FORM RFD-10 or in the statement of inward supplies in FORM GSTR-11 to be filed by such entities. Besides, both GSTIN and UIN are 15 digits and have similar alpha-numeric formats and therefore, there should not be any technical challenge before retailers/ suppliers in displaying UINs of Embassies/ UN Missions in the invoices.

k. Retailer Association of India informed that the most of the major retailers are already complying with the requirement of display of UIN in the invoices issued to UIN holders. However, there are some retailers who have not been able to make a provision for display of UIN on the invoices in their system. The retailers present during the meeting informed that in cases of some retailers almost all the supplies are B2C and accordingly, they have not made any provision in their system for display of either GSTIN or UIN of the recipients. It will be highly uneconomical for them for changing their systems for displaying UINs of recipients for meagre number of buyers and they would rather prefer to lose such a small number of customers, instead of incurring huge expenses for overhaul of their systems. It was

also stated that while most of the big retailers have made the provisions in their systems to capture the details of UIN but mostly small vendors and grocery stores might not have such a provision for display of UIN on invoices.

l. Data regarding refunds to UIN since 01.07.2017 was sought from GSTN. As per the data, it is observed that a total refund amount of Rs 1335.75 cr. has been claimed by the UIN entities u/s 55 of CGST Act during the period from 01.07.2017 till 30.09.2021, which amounts to an average of about Rs 320 Crore per year. It may be pertinent to mention that the average number of UIN holders claiming refund under section 55 of the CGST Act is approximately 250.

m. The data regarding the percentage of invoices not having UIN number in the refund claims of UIN holder u/s 55 has been taken from CGST Delhi South Commissionerate, which is the nodal office for UIN refunds for Delhi and handles the maximum number of UIN refunds in the country. As per data provided by them vide email dated 06.12.2021 in respect of top 20 UIN refund claimants for the quarter Jan-march 2021, the percentage amount of refund claimed by Embassies/ UN missions, etc., involved in respect of the invoices not containing details of UIN numbers, is about 0.324 percentage of total refund amount claimed.

n. Further it was clarified that in view of the above, it is felt that though the amount involved in the refund claims in respect of invoices, which do not contain details of UIN number, is a very small amount and there does not appear to be any major revenue risk if the present system of allowing refund to UINs on such invoices on the basis of attestation on hard copy of such invoices by Authorized representative of the UIN entity is continued. On the basis of feedback received during meeting with retailers on 30.11.2021, it is felt that it may be difficult for all the retailers, especially the smaller retailers, to make the necessary changes in their accounting software for capturing and displaying UIN on the invoices.

o. Therefore, considering this ground reality and the difficulties faced by Foreign Diplomatic Missions/ UN Organizations in getting the refund in respect of invoices which do not contain the details of UIN, as well as MEA's request for waiver of the requirement of mandatory mentioning of UIN on invoices, it is proposed that we may consider to insert a proviso in Rule 95 (3) with effect from 01.04.2021 as below:

RULE 95: Refund of tax to certain persons

(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued under section 55 shall apply for refund in FORM GST RFD 10 once in every quarter, electronically on the common portal or otherwise, either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR 11.

(2) An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD 02.

(3) The refund of tax paid by the applicant shall be available if-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice;

(b) name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant is mentioned in the tax invoice

(c) Such other restrictions or conditions as may be specified in the notification are satisfied.

Provided that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10.

(4) The provisions of rule 92 shall, *mutatis mutandis*, apply for the sanction and payment of refund under this rule.

(5) Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

p. Lastly, it was stated that the Agenda was placed before Law Committee in its meeting dated 08.12.2021 for approval and the same had been approved by LC.

q. **Decision:** The members of the GIC approved the agenda item.

r. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Notification No. 40/2021-Central Tax dated 29.12.2021.

4.2 Agenda 2 : Changes in Rules and Forms consequent to notification of amended Sections related to enforcement in CGST Act, 2017

a. In the agenda, note it was stated that various amendments in the provisions of Central Goods and Services Tax Act, 2017 (“CGST Act” in short) were made vide the Finance Act, 2021. As per recommendations of GST Council in 45th Meeting, the amended provisions of the CGST Act have to be made effective with effect from 01.01.2022. Consequent to the amendment in various provisions of the CGST Act, corresponding rules and forms relating to following sections of the CGST Act, were also required to be amended:

- I. The amended provisions of section 129 and 130, delinks these two sections. Further, amended provisions of section 129 (6) provides for sale of detained or seized goods in the prescribed manner and time to recover the penalty payable under sub-section (3) of section 129, if person fails to pay the amount of penalty within fifteen days of order issued under sub-section (3) of section 129.
- II. Also, a proviso has been added in sub-section (6) of Section 107 of the CGST Act, 2017 providing for pre-deposit of twenty five percent of penalty as per order under sub-section (3) of Section 129 for filing an appeal against the said order before the appellate authority.
- III. Section 83 is also being amended providing for attachment of property provisionally belonging to the beneficiary referred in sub-section (1A) of Section 122 of CGST Act, 2017.

b. It was further stated that the corresponding amendment in CGST Rules, 2017 would be required in rule 142 (3), rule 142(5), rule 154, rule 159, and insertion of a new rule for recovery of penalty by sale of goods or conveyance detained or seized in transit (Rule 144A). In addition, changes would also be required in FORM DRC-10, FORM DRC-11, FORM DRC-22 and FORM APL-01. Besides, it was also

proposed to prescribe a new FORM DRC- 22A for enabling the person, whose property has been provisionally attached, to file an objection to the order of provisional attachment as per provision in sub-rule (5) of Rule 159 of CGST Rules, 2017. FORM DRC-23 also needs some modification to align the same with the provisions of the Act.

c. Lastly, it was mentioned that the Law Committee in its meetings held on 13th December 2021 had approved the proposed amendments to the CGST Rules, 2017.

d. **Decision:** The members of the GIC approved the agenda item.

e. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Notification No. 40/2021-Central Tax dated 29.12.2021

4.3 Agenda 3: *Prescribing mechanism for filing of refund claim by taxpayers registered in erstwhile Union Territory of Daman & Diu post merger with Dadra & Nagar Haveli*

a. An agenda note was sent by GSTN regarding issue faced by the taxpayers of erstwhile Union Territory (UT) of Daman & Diu in claiming refund in view of merger of UT of Daman & Diu with UT of Dadra & Nagar Haveli.

b. In the said agenda note reference was invited to a letter GSTN received from the Commissioner, Central GST, Diu wherein he informed that due to merger of UT of Daman & Diu with UT of Dadra & Nagar Haveli, the taxpayers registered under the erstwhile UT of Daman & Diu are unable to file refund for the period prior to merger. The state code of the GSTINs of taxpayers of erstwhile Daman & Diu UT has changed from 25 to 26 and these taxpayers have transferred their ITC balance from the electronic credit ledger of the old GSTIN, by reversing it through last GSTR-3B filed prior to merger, to the new GSTIN, by availing the ITC through the first GSTR-3B filed post-merger. Now, when such taxpayers are trying to apply for refund on account of zero-rated supplies or inverted duty structure for the period prior to merger from the old GSTIN, they are unable to do as there is no balance available in the electronic credit ledger as the same has already been transferred to the electronic credit ledger of the new GSTIN. They are also unable to apply for refund from the new GSTIN because all the invoices bear the old GSTIN and the system has certain validations which do not allow the refund application to be filed from the new GSTIN for the period prior to the merger.

c. Due to the aforesaid facts, it has been submitted that the ITC transferred to the new GSTIN will always remain as balance and the impacted taxpayers would not be able to claim refund of ITC on account of zero-rated supply/inverted duty belonging to the period prior to merger. To enable such taxpayers to file refund application of unutilised ITC on account of zero-rated supply/inverted duty for period prior to merger using their new GSTINs, the GSTN has proposed the following process for the categories of refund where debit of ITC is required, the impacted taxpayer will be allowed to file the refund application under 'Any Other' category in the new GSTIN. In the Remarks column of the application, the taxpayer will enter 'Refund of ITC on account of goods/services supplied at Zero rated/Inverted duty structure for the period prior to merger of Daman & Diu with Dadra & Nagar Haveli'. At this stage, the taxpayer will not make any debit entry in his electronic credit ledger. Once the tax officer is satisfied with the correctness of the refund claim, he/she may direct the taxpayer to debit the ITC from the electronic credit ledger by using DRC 03. For example, if the tax officer is satisfied that out of Rs 10000, only Rs 5000 is liable to be refunded, he/she will direct the taxpayer to

make a debit. Once the taxpayer has debited the ITC, the tax officer may proceed with sanction and disbursement of the final refund amount.

d. For the refund categories where debit of ITC is not required, GSTN has suggested that the taxpayer can be allowed to file refund application under the category “Any others” mentioning the reason in the Remarks field. The tax officer may proceed ahead to scrutinize the application as usual. Though the taxpayer could file such refund with the help of his original GSTIN but officers may not be able to reverse the ITC using PMT 03 in case refund is to be disbursed in the form of ITC.

e. GSTN had further informed that the portal will not allow the taxpayer to file the refund application from his old GSTIN as no ITC would be available in the electronic credit ledger of the old GSTIN. GSTN has mentioned that the approach suggested above is quite secure besides being practical and easy to implement. GSTN has prepared a draft circular for clarifying the manner in which refund claim for the period prior to merger can be filed by such taxpayers.

f. Lastly, it was stated that the agenda note along with the draft circular was placed before the Law Committee in its meeting held on 18.11.2021, wherein the aforesaid proposal was approved.

g. **Decision:** The members of the GIC approved the agenda item.

h. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Circular No. 168/24/2021-GST dated 30.12.2021

4.4 Agenda 4: *Extension of due date for filing Annual Return for financial year 2020-21*

a. In the agenda note it was stated that the due date for filing Annual Returns specified under section 44 of the Central Goods and Services Tax Act, 2017 (in short “CGST Act”) read with rule 80 of the Central Goods and Services Tax Rules, 2017 (in short “CGST Rules”) for the financial year 2020-21 is 31st December 2021.

b. It might be noted that the amendments to section 35(5) and section 44, as per section 110 and 111 of the Finance Act, 2021, were notified w.e.f. 1st August, 2021 vide Notification No. 29/2021-Central Tax dated 30.07.2021. Vide Notification No. 30/2021-Central Tax dated 30.07.2021, exemption from FORM GSTR-9C was provided to taxpayers having AATO up to Rs. 5 crores. Moreover, vide Notification No. 31/2021-Central Tax dated 30.07.2021, taxpayers having AATO up to Rs. 2 crores were exempted from the requirement of furnishing annual return for FY 2020-21. FORM GSTR-9 and FORM GSTR-9C for FY 2020-21 were also made available on the portal in August 2021.

c. It was further stated that the number of representations have been received during the last week from various trade associations and tax practitioners representing the following:

Due date of statutory compliances for FY 2020-21 (AY 2021-22) under the Income Tax Act, 1961 and the Companies Act, 2013 have been extended.

Due date to furnish tax audit report under Section 44AB of Income Tax Act, 1961 has been extended from 30th September 2021 to 15th January, 2022. Further, due date of furnishing of Income Tax return in such cases has been extended to 15th February 2022.

Due date for filing various returns/forms for the Financial Year 2020-21 under the Companies Act, 2013 also stands extended to 31st December 2021.

d. It was also stated that there were representations that GST Annual returns could be finalised only after completion of tax audit/ company audit work to ensure the correctness of turnover to be reported in GST Annual returns along with ITC claimed and to determine whether any balance tax is payable by the taxpayer.

e. GSTPW, CBIC stated that the above issue had been examined. In terms of rule 80 (3) of the CGST Rules, read with section 44 of the CGST Act, a self-certified reconciliation statement as specified under section 44 in FORM GSTR-9C, reconciling the value of supplies declared in the return furnished for the financial year 2020-21, with the audited annual financial statement for financial year 2020-21, is required to be furnished on or before 31st December, 2021. However, considering that the due date of furnishing tax audit report in Income Tax Act has been extended to 15th January 2022, and also due date for filing various returns/ forms under Companies Act 2013 has been extended till 31st December 2021, it may be desirable that to extend the due date for furnishing the annual return under GST Laws beyond 31st December, 2021 to enable proper reconciliation of value of supplies declared in the return under CGST Act for the financial year 2020-21, with the audited annual financial statement for financial year 2020-21.

f. **Decision:** The members of the GIC approved the agenda item.

g. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Notification No. 40/2021-Central Tax dated 29.12.2021.

5. Decision of GIC by Circulation dated 12th January, 2022 on Ad hoc settlement of IGST

a. In the agenda note it was stated that depending on the amount of IGST remaining un-apportioned, provisional settlement was done from time to time on an ad-hoc basis as per the provisions of sub-section (2A) of the Section 17 of the IGST Act, 2017, which reads as under:

17. Apportionment of tax and settlement of funds. —

(2A). The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent. to the Central Government and fifty per cent. to the State Governments or the Union territories, as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections.

b. It was further stated that as per the accounts made available by the CGA, balance of about ₹ 35,000 crore is available in the IGST account by end-December. Therefore, it is proposed to apportion ₹ 35,000 crore on ad-hoc basis, 50% to Centre and 50% to States/UTs. This will reduce the revenue gap of States/UTs and, therefore, the compensation required as well.

c. **Decision:** The members of the GIC approved the agenda item.

6. Decision of GIC by circulation on 4 February, 2022 on lowering of threshold of generation of e-invoices up to turnover limit of ₹ 20 crore and above

a. In the agenda note it was mentioned that GSTN vide email dated 02.12.2021 had informed that now GSTN/ NIC are in preparedness for lowering of threshold of generation of e-invoices up to turnover limit of INR 20 crore and above.

b. Further it was stated that GST Council, in its 37th meeting held on 20th September 2019, had recommended the roll out of e-invoicing in a phased manner. Accordingly, electronic invoicing system was introduced from 01.10.2020 for taxpayers with turnover of more than ₹ 500 crores in any preceding financial year from 2017-18 onwards for B2B transactions and for export invoices. The same was extended for taxpayers with turnover of more than ₹ 100 crores from 01.01.2021. Further, vide notification No. 05/2021 dated 08.03.2021, the same had been extended for taxpayers with turnover of more than ₹ 50 crores from 01.04.2021.

c. GSTPW, CBIC stated that data had been received from GSTN vide email dated 18.12.2021 related to number of taxpayers along with their turnover and the same is stated as under:

Summary of Slab wise PAN level AATO of 2020-21		
Turnover Slab	No. of PAN	No. of GSTINS
20 Cr to 50 Cr	1,53,500	2,19,156
25 Cr to 50 Cr	1,02,039	1,50,064
30 Cr to 50 Cr	67,895	1,02,441
50 Cr to 100Cr	48,217	86,963
100 Cr to 500Cr	35,154	1,00,635
Above 500Cr	8,912	70,800

d. Further the agenda note highlighted that E-invoice has been one of the major reforms taken by the Government which is beneficial for both tax administration as well as trade. It helps taxpayers in backward integration and automation of tax relevant processes, and real-time data update on the GSTN system and thereby, drastically reducing the time taken in filing the returns. Therefore, it is proposed that next phase of e- invoicing may be rolled out. Taxpayers with annual turnover of more than INR 20 Crore in any preceding financial year from 2017-18 onwards may be brought under the ambit of e-invoice for B2B transactions and for export invoices in the fourth phase as per capacity of GSTN/NIC.

e. Further, sufficient window of 2-3 months may be provided to taxpayers to make necessary IT changes as well as for NIC to enable the specified taxpayers on sandbox for testing. GSTPW, CBIC stated that data suggests that approximately 2,19,156 GSTINs have AATO between INR 20 Cr to 50 Cr who would be impacted by the decision. Accordingly, it is proposed that this provision for lowering threshold for issuance of e-invoice to INR 20 crore may be made applicable with effect from 1st April 2022 to provide sufficient time to taxpayers as well as NIC to make necessary preparations.

f. **Decision:** The members of the GIC approved the agenda item.

g. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Notification No. 01/2022-Central Tax dated 24.02.2022.

7. Decision of GIC by circulation on 23rd March, 2022 on deferring e-Wallet Scheme and extending exemption from IGST and Cess on Imports of Goods under AA/EPCG/ EOU for further period of three months till 30.06.2022

a. In the agenda note it was stated that it might be recalled that the implementation of e-Wallet scheme, as recommended by the Council in its 22nd meeting, has been deferred periodically with the approval of GST Council. As of now, the same has been deferred till 31.03.2022 and consequently exemption from IGST and Cess on imports of goods under AA/EPCG/ EOU have been provided till 31.03.2022. However, Hon'ble Finance Minister while permitting the extension of the exemption from payment of IGST/Cess etc. on imports under AA/EPCG/EOU Schemes up to 31.03.2022, had directed to look into the technical issues related to e-wallet.

b. It was further stated that the Directorate General of Export Promotion (DGEP) while examining the issue has observed that the scale of IT systems to implement the e-wallet would be huge and complex with numerous linkages between DGFT, GSTN, ICES, Customs, supporting manufacturers, BRC module etc. There would be further complexities in Return and Accounting system of payment etc. and all these would add extra burden upon compliance requirement. Further, there would be complexity in settlement in case part payment is done through e-wallet and part through cash/ITC ledger. The creation of 'virtual credit' in the e-wallets may be required to be synchronized with the RBI regulations. Accordingly, after examination of the issue, DGEP had suggested to discontinue the pursuing of e-wallet scheme and to continue with the present exemption from IGST and Cess etc. on the imports made under AA/EPCG/EOU schemes.

c. GSTPW, CBIC also stated in the agenda note that the issue has been comprehensively deliberated by the Law Committee. The Law Committee has recommended the following:

- i. Present refund mechanism to exporters have been stabilized and streamlined. Present Exemption Notifications may be continued.*
- ii. e-wallet scheme may not be pursued further.*

d. Since the tax exemption on imports under AA/EPCG/EOU scheme is expiring on 31.03.2022, and the GST Council meeting is not likely to be held before 31st March, it was also proposed that exemption from IGST and Cess on imports of goods under AA/EPCG/ EOU may be extended for further period of three months till 30.06.2022.

e. **Decision:** The members of the GIC approved the agenda item.

f. **Implementation status:** In pursuance of the GIC decision dated 21.03.2022, Notification No. 18/2022-Customs dated 31.03.2022 and Notification No. 19/2022-Customs dated 31.03.2022 have been issued for amending the Principal notifications for exemption from IGST and Cess on Imports of Goods under EOU and AA/EPCG respectively.

8. Decision of GIC by Circulation on 29th March, 2022 on Ad hoc Settlement of IGST Amount of ₹ 20,000 Crores.

a. In the agenda note it was stated that that depending on the amount of IGST remaining un-apportioned, provisional settlement was done from time to time on an ad-hoc basis as per the provisions of sub-section (2A) of the Section 17 of the IGST Act, 2017, which reads as under:

17. Apportionment of tax and settlement of funds. —

(2A). The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent. to the Central Government and fifty per cent. to the State Governments or the Union territories, as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections.

b. It was further stated that as per the accounts made available by the CGA till Feb'2022, and the expected unsettled IGST balance net of settlement and refund during the current month, about ₹20,000 crore is available in the IGST account by end-March, 2022.

c. Therefore, it was proposed to apportion ₹20,000 crore on ad-hoc basis, 50% to Centre and 50% to States/UTs. This would reduce the revenue gap of States/UTs and, therefore, the compensation required as well.

d. **Decision:** The members of the GIC approved the agenda item.

9. Decision of GIC by Circulation dated 19 April, 2022 on changes in FORM GSTR-3B in light of notification No. 17/2021- Central Tax (Rate)

a. In the agenda note it was stated that on the recommendations of GST Council in its 45th meeting, "Restaurant Service" has been notified under section 9(5) of the CGST Act, 2017 w.e.f. 01.01.2022, i.e., to make Electronic Commerce Operators (ECOs) liable to pay GST on 'restaurant service' supplied through them [notification no. 17/2021-Central Tax (Rate) dated 18.11.2021 and corresponding notifications under IGST Act and UTGST Act].

b. It was further stated that certain representations were received from ECOs wherein the issue of how the details of supplies notified under section 9(5) shall be furnished was raised, and it was requested to provide separate lines in GSTR returns for furnishing the same.

c. It was also stated that the issue was deliberated by the Law Committee and it observed that as the provisions regarding payment of tax by ECOs in respect of delivery of "restaurant service" were into force w.e.f. 1 January, 2022, while on the immediate basis, the information in respect of supplies made through ECOs under Section 9(5) of CGST Act might be allowed to be declared both by suppliers as well as ECOs in the existing rows/ tables of GSTR-3B, however, the matter might be examined by the GSTN to provide for separate rows in GSTR-3B for declaration of such supplies through ECOs under section 9(5) by both the suppliers as well as by ECOs.

d. Additionally, it was clarified vide Circular No. 167/23/2021-GST dated 17.12.2021 that the ECOs may report such supplies provided through them under section 9(5) as outward taxable supplies for the time being and may also furnish the details of such supplies under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case may be, for accounting purpose. It was also clarified that the registered persons supplying restaurant services through ECOs under section 9(5) would report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B for the time being. Further, GSTN was requested to provide separate rows/tables in GSTR-3B to declare the supplies through ECOs under section 9(5) by both the suppliers and ECOs.

e. GSTPW, CBIC also stated that GSTN had informed that the development of an additional table for reporting taxes paid under section 9(5) of the CGST Act, both by ECOs and the suppliers, has been completed. Therefore, it was proposed to issue a notification in order to notify the changes in FORM GSTR-3B to this effect.

f. Haryana suggested certain alternatives to the introduction of Tables in Form GSTR1/3B.

g. **Decision:** In light of comments received from Haryana the matter has been referred to Law committee for further examination.

10. Decision of GIC by circulation dated 17th May, 2022 on extension of due date of filing FORM GSTR-3B for the month of April, 2022 and due date of payment of tax for the month of April, 2022 by the taxpayers who are under QRMP scheme, because of technical glitch in generation of FORM GSTR-2B

a. In the agenda note it was stated that GSTN has reported that for the tax-period of April, 2022, the process of generating GSTR 2B and auto-population of GSTR-3B on the portal by 14th May, 2022 did not proceed as planned. Efforts were made to carry out the process again on 15th and 16th May, 2022. GSTN has further informed that the GSTR 2B process has been running well since October, 2020 and that no change in policy or business process design has been made since then. Therefore, the glitch is a pure technical glitch. It was reported that the expected time to resolve the glitch is by midnight of 18th May, 2022.

b. In the agenda note it is stated that taxpayers have effectively lost 4 days for reconciling their admissible ITC as communicated to them in FORM GSTR- 2B, as FORM GSTR-2B would now be generated on 18th of May, 2022. Accordingly, it is proposed that

i. The due date of filing FORM GSTR-3B for the month of April, 2022, by registered person furnishing return under sub-section (1) of section 39 of the CGST Act, be extended from 20th May, 2022 to 24th May, 2022; and

ii. The due date of payment of tax for the month of April, 2022 by the taxpayers who are under QRMP (Quarterly return Monthly payment) scheme be extended from 25th May, 2022 to 27th May, 2022.

c. **Decision:** The members of the GIC approved the agenda item.

d. **Implementation status :** In pursuance of GIC decision dated 17.05.2022, Notification No. 05/2022 – Central Tax dated 17th May, 2022 was issued for extending the due date for furnishing the return in FORM GSTR-3B for the month of April, 2022 and Notification No. 06/2022 – Central Tax dated 17th May, 2022 has been issued for extending the due date for depositing the tax due under proviso to sub-section (7) of Section 39 of the Central Goods and Services Tax Act, 2017 in FORM GST PMT-06 for the month of April, 2022 till the 27th May, 2022.

11. Decision of GIC by Circulation dated 18th May, 2022 on waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22

a. In the agenda note it was stated that Sub-rule (1) to rule 62 of the CGST Rules, 2017 requires every registered person paying tax under section 10 to furnish a return for every financial year in **FORM GSTR-4**, till the 30th day of April following the end of such financial year, besides furnishing a

statement, every quarter containing the details of payment of self-assessed tax in **FORM GST CMP-08**, till the 18th day of the month succeeding such quarter. Accordingly, the due date to furnish **FORM GSTR-4** for FY 2021-22 was 30th April, 2022.

b. The Agenda Note drew attention to the advisory dated 30.04.2022 issued by GSTN to composition taxpayers in respect of the issues arising out of negative liability in **FORM GSTR-4**. The liability of the complete year is required to be declared by the taxpayers in **FORM GSTR-4** under applicable tax rates by filling up table 6 mandatorily. In case, there is no liability the said table may be filled up with '0' value. If no liability is declared in table 6, it was presumed (on portal) that no liability is required to be paid, even though taxpayer may have paid the liability through **FORM GST CMP-08**. In such cases, liability paid through **FORM GST CMP-08** was treated as excess tax paid and was moved on portal to Negative Liability Statement for utilization of same for subsequent tax period's liability.

c. The Agenda Note stated that a large number of tickets were received on the GSTN Helpdesk for reducing the negative liability from the Negative Liability Statement. The said issue was deliberated in the Law Committee meeting held on 08.10.2021.

d. And accordingly, the amount available in negative liability statement had been debited for all taxpayers. It was noticed that some taxpayers had utilised the amount available in negative liability statement for paying the liability to file statement in **FORM GST CMP-08** or **GSTR-4** of subsequent financial year. In such cases, the amount utilised out of negative liability statement had been debited in the cash ledger. Though such liability should have been paid by depositing the amount through challan, but in some cases the amount had not been deposited by the taxpayers. The taxpayers who had deposited the amount in cash ledger, the debited amount had been adjusted, whereas in case the amount of liability had not been deposited through challan, the balance in cash ledger became negative. In such cases, the taxpayers were advised by GSTN through the above-mentioned advisory to deposit the past liability through challan of equal amount urgently. In case the liability had been paid through adding in the next years' liability, the same could be claimed as refund through application in **Form GST RFD-01**.

e. The Agenda Note also stated that a large number of representations had been received from the taxpayers stating that due to the debit made by the system in cash ledger, they are suddenly facing cash crunch for paying the remaining due amount as per GSTR-4 return. Since the said action has been initiated on the system towards the end of the month of April, shortly before the due date of filing GSTR-4 return for FY 2021-22, viz. 30.04.2022, taxpayers have complained of paucity of time to arrange for requisite funds. Therefore, a large number of taxpayers have reported difficulty in furnishing **FORM GSTR-4** by the due date.

f. The issue was deliberated by the Law Committee in its meeting held on 07.05.2022. Law Committee has recommended that late fee may be waived for delay in filing GSTR-4 for FY 2021-22 for two months from the due date, i.e. late fee under section 47 may be waived **for the period 01.05.2022 till 30.06.2022** for delay in filing **FORM GSTR-4** for FY 2021-22. Accordingly, draft notification was placed before the GIC for approval.

g. **Decision:** GIC members approved the agenda item.

h. Implementation status: In pursuance of GIC decision dated 18.05.2022, Notification No. 07/2022 – Central Tax dated 17th May, 2022 has been issued vide which late fee payable for delay in furnishing of **FORM GSTR-4** for FY 2021-22 under section 47 has been waived for the period from the 1st day of May, 2022 till the 30th day of June, 2022.

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

Agenda Item 3(i): Issuance of clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification

It may be recalled that vide para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 it was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and outward supplies are same. Para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 is reproduced, as under:

“Refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.”

2. In this context, attention is drawn to the Hon’ble High Court of Gauhati’s order dated 02-09-2021 in the case of BMG Informatics Pvt Ltd. v. Union of India wherein the Hon’ble Court has observed as under:

“28. Consequently, in view of the clear unambiguous provisions of Section 54(3) (ii) providing that a refund of the unutilized input tax credit would be available in the event the rate of tax on the input supplies is higher than the rate of tax on output supplies, we are of the view that the provisions of paragraph 3.2 of the circular No.135/05/2020-GST dated 31.03.2020 providing that even though different tax rate may be attracted at different point of time, but the refund of the accumulated unutilized tax credit will not be available under Section 54(3)(ii) of the CGST Act of 2017 in cases where the input and output supplies are same, would have to be ignored.

29. Consequent upon the conclusion arrived at, we are of the view that the rejection of the claim for refund by the petitioner assessee in the order dated 22.05.2020 of the Assistant Commissioner by referring to the provisions of paragraph 3.2 of the circular No.135/05/2020-GST dated 31.03.2020 would be unsustainable in law.

30. But at the same time, we also observe that the reasoning given by the Joint Commissioner (Appeals) in the appellate order dated 29.10.2020 for reversing the order of rejection by the Assistant Commissioner would also be not sustainable. The only reasoning given by the Joint Commissioner (Appeals) is that the issue decided by the Assistant Commissioner was not included in the show cause notice dated 10.04.2020 and, therefore, there was a violation of the principles of natural justice. We are also unable to agree with the other aspect of the order of the Joint Commissioner (Appeals) that merely because the order of the Assistant Commissioner dated 22.05.2020 was set aside on the ground of there being a violation of the principles of natural justice in the show cause notice dated 10.04.2020, therefore, without making any further enquiry as to whether the tax rate on the input supplies was higher than the tax rate on the output supplies, the Joint Commissioner (Appeals) would direct a refund of the unutilized input tax credit under Section 54(3)(ii) of the CGST Act of 2017. From such point of view, even the order of the Joint Commissioner (Appeals) dated 29.10.2020 would be unsustainable in law.

31. Consequently, both the orders i.e., dated 22.05.2020 of the Assistant Commissioner as well as the appellate order dated 29.10.2020 of the Joint Commissioner (Appeals) are set aside.

32. The matter stands remanded back to the Assistant Commissioner, GST, Guwahati to

consider the matter afresh and arrive at his own factual satisfaction as to whether the actual rate of tax on the input supplies made by the petitioner assessee is higher than the actual rate of tax on the output supplies made by them and depending upon the satisfaction that may be arrived to pass a reasoned order on the claim of the petitioner assessee for refund under Section 54(3)(ii) of the CGST Act of 2017. If the Assistant Commissioner arrives at his satisfaction that the actual rate of tax on the input supplies made by the petitioner assessee is higher than the actual rate of tax on the output supplies appropriate order for refund may be passed and on the other hand, if the Assistant Commissioner upon factual deliberation arrives at his satisfaction that the actual rate of tax on the input supplies was not higher than the actual rate of tax on the output supplies, again an appropriate order may be passed by giving reasons.

*33. However, we have taken note of that the circular No.135/05/2020-GST dated 31.03.2020 was issued in exercise of the powers under Section 168(1) of the CGST Act of 2017. As already noted, Section 168(1) of the CGST Act of 2017 pertains to a situation where the Central Board of Indirect Tax and Customs considers it necessary and expedient to do so for the purpose of uniformity in implementing the CGST Act of 2017. In other words, the provisions of Section 168(1) can be invoked to bring in uniformity in the implementation of the CGST Act of 2017. **In the instant case, when the provisions of Section 54(3)(ii) of the CGST Act of 2017 are unambiguous and explicitly clear in nature, there is no requirement of bringing in any uniformity in the implementation of the Act and the provisions of Section 54(3)(ii) would have to be applied in the manner it is provided in the Act itself.***

3. On perusal of the order of the Hon'ble HC of Gauhati, it is observed that the Hon'ble High Court has questioned the issuance of clarification in the said matter vide Circular No. 135/05/2020-GST, dated 31.03.2020 by exercising the powers under Section 168(1) of the CGST Act, 2017 stating that as the provisions of Section 54(3)(ii) of the CGST Act of 2017 are unambiguous and explicitly clear in nature, there is no requirement of bringing in any uniformity in the implementation of the provisions of Section 54(3)(ii).

3.1 In this regard, it is submitted that para 3 of the Circular No. 135/05/2020-GST, dated 31.03.2020 was issued to clarify a situation where the supplier was dealing in goods which were taxed at a higher rate and subsequently the rate of tax on same goods was reduced from a particular date. There may be a situation when input tax credit gets accumulated in the electronic credit ledger of the said supplier on account of supply of goods, in stock on date of such reduction of tax, at a rate lower than what was paid while procuring those goods (before date of such reduction of tax). The issue arose whether refund of ITC would be admissible in such cases on account of inverted rate structure. **The aforesaid issue was deliberated by the Law Committee in its meeting held on 27.12.2019 on the basis of a reference received from the State of Delhi wherein it was decided that as in such a case, the rate of tax on inputs and output supplies are same at any given point of time and the conditions of section 54(3)(ii) for refund of accumulated credit on account of inverted duty structure do not get satisfied in such a case. It was decided that the issue may be clarified through a circular.** In this context, the issue was examined in the impugned Circular noting that the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. However, while giving the conclusion, the circular mentioned **that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.**

4. The facts of the case in order of Hon'ble Gauhati High Court mentioned above are that the taxpayer had obtained input supplies either from the manufacturer, or from some other authorized dealer and made the output supplies to a Government Department or PSU or a Research and Educational Institute by availing partial exemption of the GST under Notification 45/2017-GST (Rate) dated 14.11.2017 of the Government of India in the Ministry of Finance, Department of Revenue. The Notification 45/2017-Central Tax (Rate) dated 14.11.2017 has been issued under Section 11(1) of the CGST Act of 2017 and provides that on the recommendation of the GST Council, the goods specified

in column (3) of the table therein are exempted from the so much of the central tax leviable thereon under Section 9 of the Act as in excess of the amount calculated at the rate of 2.5% in respect of supplies to the institutions specified in the corresponding entry in column (2) of the said table. Accordingly, in the said case, the rate of tax on input are higher, whereas the rate of tax on output supplies are lower on account of the concessional notification in respect of specified supplies. **Hon'ble Court has held that para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 is unsustainable in law as the present case gets covered under section 54(3)(ii), whereas the impugned circular bars it.**

5. It may be seen that the intent behind para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 was to cover only such cases where the input and output goods were same and the rate of tax on such goods was reduced at a certain point of time, leading to a situation where same goods attracted different tax rates at different points in time thus causing accumulation of input tax credit (ITC). As the rate of tax was same at a particular point of time on input and output goods, the condition of clause (ii) of first proviso to sub-section (3) of section 54 did not appear to be satisfied in respect of such cases.

5.1 However, the said circular did not cover those cases where the supplier is making supply of goods under a concessional notification and the rate of tax of output supply is less than the rate of tax on input supply (of the same goods) at the same point of time due to supply of goods by the supplier under such concessional notification. As in such cases, the rate of tax on inputs is higher than the rate of tax on output supplies and such supplies are neither Nil rated nor fully exempt supplies, such cases appear to be covered under clause (ii) of first proviso of sub-section (3) of section 54 of the CGST Act, 2017 and the credit accumulated on account of the same appears to be admissible for refund under the said clause, provided supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under said clause.

6. In view of the above, Law Committee in its meeting held on 18.11.2021 deliberated the issue and recommended that the issue may be clarified through a circular that the refund of accumulated input tax credit on account of inverted structure as per clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is admissible in cases where input and output goods are same and the accumulation of input tax credit is on account of rate of tax on inputs being higher than the rate of tax on output supplies at the same point of time, due to a concessional notification issued by the Government, other than cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under said clause. The draft Circular as recommended by the Law Committee is enclosed as **Annexure-A**.

7. The agenda along with the draft circular is placed before the GST Council for deliberation and approval.

Circular No. XXX/XX/2021-GST

F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the January, 2022

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 issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification – Reg.

Various representations have been received seeking clarification with regard to applicability of para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 in cases where the supplier is required to supply goods at a lower/nil rate under Concessional Notification issued by the Government. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law in this regard across the 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 as under:

2. Vide para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020, it was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output supply is same. Para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 is reproduced, as under:

*“Refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. **It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.**”*

3. The matter has been examined. The intent of para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 was not to cover those cases where the supplier is making supply of goods under a concessional notification and the rate of tax of output supply is less than the rate of tax on input supply (of the same goods) at the same point of time due to supply of goods by the supplier under such concessional notification.

4. Therefore, it is clarified that in such cases, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods), as per some concessional notification issued by

the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions. **Accordingly, para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 stands substituted as under:**

“3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.

3.3 There may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause.”

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(ii): Amendment in formula prescribed in sub-rule (5) of rule 89 of CGST Rules, 2017 for calculation of refund of unutilised Input Tax Credit on account of inverted duty structure

Kind reference is drawn to the judgment dated 13.09.2021 pronounced by the Hon'ble Supreme Court of India in case of UOI vs M/s VKC Footsteps wherein the vires of rule 89(5) of the Central Goods and Services Tax Rules, 2017 (in short "CGST Rules") was challenged on the ground that clause (ii) of the 1st proviso to section 54(3) of the Central Goods and Services Tax Act, 2017 (in short "CGST Act") provides for refund of ITC availed on both inputs and inputs services, however, rule 89(5) restricts the refund of ITC availed on input services. Hon'ble SC in its judgment dated 13.09.2021 has upheld the vires of rule 89(5). However, Hon'ble SC has requested GST Council to have a re-look into the formula prescribed under rule 89(5). The relevant portion of the judgment is reproduced below:

"104 We now turn to the submissions of the counsel for the assessee regarding the anomalies in the formula. In our view, the submission of Mr Sujit Ghosh, that the formula creates a distinction between suppliers having a higher component of input goods than those having a higher component of input services, and must be read down accordingly, must be rejected. The purpose of the formula in Rule 89(5) is to give effect to Section 54(3)(ii) which makes a distinction between input goods and input services for grant of refund. Once the principle behind Section 54(3)(ii) of the CGST Act is upheld, the formula cannot be struck down merely for giving effect to the same.

105 The aberrations which have been pointed out by the Mr Sridharan and Mr G Natarajan certainly indicate that the formula is not perfect. The formula makes a presumption that the output tax payable on supplies has been entirely discharged from the ITC accumulated on account of input goods and there has been no utilisation of the ITC on input services. While a similar formula is provided in Rule 89(4) with regard to zero rated supplies, in that case, the 'Net ITC' includes input goods and input services and thus, there is no imbalance between the different components of the formula. The formula prescribed in Rule 89(5) however, seeks to deduct the total output tax from only one component of the ITC, namely ITC on input goods. This in our view is at odds with reality, where the ITC on both input goods and input services is accumulated in the electronic ledger and is then utilised for the payment of output tax. In making such an assumption, the formula tilts the balance in favour of the Revenue by reducing the refund granted. We are equally cognizant of the fact that the proposed solution, that is prescribing an order of utilisation of the ITC accumulated on input services and input goods, may tilt the balance entirely in favour of the assessee as that would make a contrary assumption that the output tax is discharged by the ITC accumulated on account of input services entirely. Another possible solution could be that the Rule itself provides for a statutory assumption or a deeming fiction of utilisation of a certain percentage of ITC on input services towards the payment of output tax for the purpose of calculation of refund.

[...]

111 The above judicial precedents indicate that in the field of taxation, this Court has only intervened to read down or interpret a formula if the formula leads to absurd results or is unworkable. In the present case however, the formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on accumulation of unutilised ITC. It is merely the case that the practical effect of the formula might result in certain inequities. The reading down of the formula as proposed by Mr Natarajan and Mr Sridharan by prescribing an order of utilisation would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the legislature, which is impermissible. Accordingly, we shall refrain from replacing the wisdom of

the legislature or its delegate with our own in such a case. However, given the anomalies pointed out by the assesseees, we strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same.”

2. On perusal of the judgment, it can be observed that the Hon’ble Apex Court, while upholding the vires of rule 89(5), has taken cognizance of the anomalies pointed out by the assesseees in the formula prescribed under sub-rule (5) of rule 89 of CGST Rules, 2017 and has requested GST Council to reconsider the said formula. In this regard, the relevant portion of the judgment wherein the submissions of the party’s counsel have been recorded is reproduced below:

“95 Mr G Natarajan, Mr Sujit Ghosh, learned Counsel, and Mr V Sridharan, learned Senior Counsel, have also urged an alternative submission for the challenge to Rule 89(5). It has been submitted that the formula prescribed in Rule 89(5) which seeks to grant refund of the ITC accumulated on account of input goods, is inherently flawed and will lead to anomalous results. The alternative submission is made on the assumption that Section 54(3)(ii) read with Rule 89(5) is restricted to refund of ITC accumulated on account of input goods only, and not input services.

96 Mr G Natarajan, learned Counsel appearing on behalf of the intervenor, has submitted that as it was originally framed, ‘Net ITC’ in Rule 89(5) allowed for a refund on account of an inverted duty structure both for input goods and input services. The position was amended initially on 18 April 2018 with prospective effect and thereafter on 13 June 2018 with retrospective effect on 1 July 2017. The formula prescribed in Rule 89(5) seeks to identify the quantum of ITC availed on input goods attributable to the outward supplies having an inverted rate structure. From such quantum of ITC on input goods, the tax payable by the supplier on such inverted rated supplies of goods and services is reduced to arrive at the quantum of credit accumulating on account of inverted rate structure, which is eligible for refund. The submission of Mr Natarajan is that in the formula prescribed under Rule 89(5), while reducing “tax payable on such inverted rated supplies of goods or services”, the taxpayer should first be allowed to utilize the ITC availed on input services which is otherwise not eligible for refund. If the formula prescribed under Rule 89(5) is not construed in the above manner, it is alleged that it will lead to inequality between taxpayers dealing with outward supplies involving only an inverted rate structure (single line of goods) and taxpayers dealing with outward supplies having both an inverted rate structure and those not having inverted rate structure. Thus, it has been submitted that the Court should read down the formula prescribed in Rule 89(5) to the effect that while calculating the refund entitlement as the difference between Net ITC and tax payable on such supplies having inverted rate structure, it is presumed that the ITC accumulated on account of input services be allowed to be used for payment of tax payable on inverted goods and services, and the remaining balance of tax, which is paid out of accumulated ITC on account of input goods, is deducted from Net ITC in the formula.

97 Mr G Natarajan’s submission indicates an aberration where a registered person with a single product with an inverted duty structure is neither able to use the unutilized ITC for the payment of tax on output supply nor is allowed a refund. On the other hand, a registered person with products involving an inverted duty structure and otherwise, is in a position to utilise the ITC availed on input services for payment of tax on turnover not having an inverted rate structure. Mr G Natarajan has given the following example:

<i>S. No.</i>	<i>Description</i>	<i>Tax payer having only turnover of inverted rate structure</i>	<i>Tax payer having both turnover of inverted rate structure and other turnover</i>
<i>(i)</i>	<i>(ii)</i>	<i>(iii)</i>	<i>(iv)</i>
1	Value of supply of goods, attracting 5% GST (Turnover having inverted rate structure)	Rs. 50,00,000	Rs. 50,00,000
2	Value of supply of goods, not having inverted rate structure	NIL	Rs. 50,00,000
3	Adjusted Total Turnover (1+2)	Rs. 50,00,000	Rs. 1,00,00,000
4	GST payable @ 5% on turnover having inverted rate structure on 5% (1)	Rs. 2,50,000	Rs. 2,50,000
5	GST payable @ 18% on turnover not having inverted rate structure	NA	Rs. 9,00,000
5	ITC on inputs availed during the tax period	Rs. 3,00,000	Rs. 6,00,000
6	ITC on input services availed during the tax period	Rs. 50,000	Rs. 1,00,000
7	Refund entitlement as per the formula	$\begin{aligned} & \left[\frac{\text{Rs. } 3,00,000 \times \text{Rs. } 50,00,000}{\text{Rs. } 50,00,000} \right] - \text{Rs. } 2,50,000 \\ & = \text{Rs. } 50,000 \end{aligned}$	$\begin{aligned} & \left[\frac{\text{Rs. } 6,00,000 \times \text{Rs. } 50,00,000}{\text{Rs. } 1,00,00,000} \right] - \text{Rs. } 2,50,000 \\ & = \text{Rs. } 50,000 \end{aligned}$
8	Remarks	The ITC of Rs. 50,000 availed on input services is neither allowed as refund, nor used for payment of tax on output supply, but allowed to accumulate.	The Balance input credit of Rs. 3,00,000 and the entire credit of Rs. 1,00,000 availed on input services can be used for payment of tax on turnover not having inverted rate structure.

98 The submission of Mr Natarajan has also been supported by Mr V Sridharan in rebuttal. The formula in Rule 89(5) is reproduced below:

“Maximum Refund Amount={ (Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services”.
(emphasis supplied)

99 Mr V Sridharan has urged that the second leg of the formula, that is, “tax payable on such inverted rated supply of goods and services” takes into account the entire tax payable on output supplies. In reality, the tax payable on output supplies would have been discharged by utilising the ITC on input goods and input services. However, the formula under Rule 89(5) presumes that nothing has been utilised from the ITC on input services and the entire tax on output supplies is discharged by utilising ITC on input goods. It was urged that although the stated objective of the formula is to grant refund of unutilised ITC accumulated on account of input goods, by deducting the entire sum of tax payable on output supplies, the quantum of such refund is reduced and the cascading effect of taxes is maximised. As a solution to the said anomaly, Mr Sridharan has proposed that for the purposes of Rule 89(5), an assumption must be made that ITC accumulated on account of input services, which is not refundable under Section 54(3), is used for discharging the output tax payable on inverted rate supply of goods and services. The remaining balance of output tax, must be then presumed to have been discharged from the ITC accumulated on account of input goods and it is only this remaining balance that should be deducted from the formula to calculate the refund. In other words, Mr Natarajan and Mr Sridharan propose an order of utilisation in the formula by which the ITC accumulated on account of input services is used first for discharging the tax liability and only then is the ITC accumulated on account of input goods used. During the course of his submissions, Mr Sridharan has relied on the decision of this Court in **Commissioner of Income Tax, Coimbatore v. Lakshmi Machine Works** and has urged before us to adopt a purposeful and schematic interpretation to the formula which will make it comparable and workable.

100 Mr Sujit Ghosh has urged before us that the formula in Rule 89(5) creates a distinction between suppliers of services having a higher component of input goods than input services as against suppliers of services having a higher component of input services than input goods. In his submissions, Rule 89(5) would favour the former as they would be entitled to a larger quantum of refund on account of more use of input goods.”

3. In this regard, it would be pertinent to reproduce sub-rule (5) of rule 89 of the CGST Rules, which provides formula for calculation of refund of unutilised ITC on account of inverted duty structure, as under:

“(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula: -

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation: - For the purposes of this sub-rule, the expressions –

- (a) “Net ITC” shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) [“Adjusted Total turnover” and “relevant period” shall have the same meaning as assigned to them in sub-rule (4).]”

4. Hon’ble Supreme Court has upheld the exclusion of ITC availed on input services from the computation of Net ITC. However, the Apex Court has noted that the formula assumes that the tax payable on inverted rated supply of goods and services has been paid by utilising input tax credit on inputs only, such assumption skews the formula in favour of revenue. The Apex Court has, therefore, requested GST Council to reconsider the formula in view of the submissions made by the party’s counsel. Hon’ble Supreme Court has also suggested that the Rule itself can provide for a statutory assumption or a deeming fiction of utilisation of a certain percentage of ITC on input services towards the payment of output tax for the purpose of calculation of refund.

5. In this regard, it is worth mentioning that a taxpayer can discharge its outward tax liability by utilising the ITC available in electronic credit ledger and the moment ITC is utilised from the electronic credit ledger, it may not be possible to differentiate whether the ITC, which has been utilised for discharging tax liability, is attributable to inputs or input services. Further, no data is captured on the GST portal, either in **FORM GSTR-3B** returns or even in Annual Return in **FORM GSTR-9/9C**, regarding ITC availed on account of inputs as well as input services separately (in the annual return, based on the representations received from the taxpayers, option has been made available to the taxpayer not to give bifurcation of ITC availed on account of inputs and input services). Besides, there is also no such data on ITC utilization also, to show the amount of ITC on account of inputs and input services separately that has been utilised for discharge of outward tax liability. **In view of this, it may not be possible at this stage to find out or prescribe either any actual percentage based on past data of the taxpayer or even any deeming percentage of ITC on inputs and input services utilised towards the payment of output tax for the purpose of calculation of refund under sub-rule (5) of rule 89 of the CGST Rules, 2017.** Therefore, prescribing a deeming percentage of tax payable being discharged utilising the ITC availed on input services in the formula, as suggested by the Hon’ble SC, is not feasible in absence of any empirical data regarding the same.

6. In absence of any empirical data, an alternate option is to consider utilisation of ITC on account of inputs and input services for payment of output tax on inverted rated supply of goods and services in the same ratio in which ITC has been availed on inputs and input services during the said tax period. This objective criterion can be used to consider revision of the formula prescribed in rule 89(5) as suggested by Hon’ble Supreme Court. Accordingly, the following amendment in formula prescribed in rule 89(5) is proposed:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – {tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}.

By the proposed amendment in the formula as above, only that part of tax payable on inverted supply of goods and services would be subtracted that is attributable to have been paid utilising the ITC availed on input goods. This would bring objectivity in the formula and will also help in achieving the desired goal of removing, to a large extent, the anomaly in formula as pointed out by the Hon’ble Supreme Court in the aforesaid judgment.

7. The data (as on 11.10.2021) regarding the inverted duty structure refund filed in **FORM GST RFD-01** w.e.f. 26.09.2019, as received from GSTN, is as under:

(Amount in Rs. Crores)

FY	No. of GSTI Ns applic d	No. of ARNs	Total Claim Amount	Net ITC Reported		Tax payable on such inverted rated supply reported		No. of ARN Sanctio ned	No. of ARNs Rejecte d	Amount	
				I+C+S	Cess	I+C+S	Cess			Sanction ed	Rejected
2019 -20	17932	42436	8023.69	30671.04	353.18	17347.23	122.43	41004	1529	7338.31	685.37
2020 -21	40296	109299	14235.58	56271.36	120.95	29228.60	13.91	104317	4994	11881.14	2354.43
2021 -22	30036	59564	8734.92	31690.41	105.06	15820.14	5360.65	57644	2043	7591.26	1143.66
Total		211299	30994	118633	579	62396	5497	202965	8566	26811	4183

From the table above, it can be seen that from 26.09.2019 to till 11.10.2021, refund amounting to **Rs. 26,811 crores** have been sanctioned on account of inverted rate structure. It is mentioned that a Group of Ministers(GoM) has also been constituted by GST Council on the issue pertaining to rate rationalisation including the issue of removal of inversion in various goods and services which may reduce the requirement of refunds on account of inverted rate structure.

8. Alternatively, one view could be that present formula in rule 89(5) of the CGST Rules is proper and does not require any change.

9. The issue was deliberated by the Law Committee in its meeting held on 18.11.2021. In the absence of any empirical data, **LC has recommended** to consider utilisation of ITC on account of inputs and input services for payment of output tax in the same ratio in which ITC has been availed on inputs and input services during the said tax period and to use this objective criteria to revise the formula prescribed in rule 89(5) as suggested by Hon'ble SC. Accordingly, the following amendment in formula prescribed in rule 89(5) has been recommended by LC:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – {tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}.

10. The agenda is placed before the GST Council for deliberation and approval of the recommendation of the Law Committee.

Agenda Item 3(iii): Authority to issue recurring SCN in case of an enforcement action initiated by the Central authorities against a taxpayer assigned to State and vice versa

Due to cross-empowerment, an enforcement action against a taxpayer assigned to State Tax authorities can be initiated by the Central Tax authorities and vice versa. In such cases, various consequential actions relating to such cases such as appeal, review, adjudication, rectification, revision, etc need to be taken.

2. In this regard, section 6 of the CGST Act provides for cross-empowerment of officers appointed under the State Goods and Services Tax Act as proper officers for the purposes of the CGST Act. Similar provisions exist in various State Goods and Services Tax Acts empowering officers of Central Tax in relation to taxpayers under State Administrations. The said section is reproduced below:

“6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances. — (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1), –

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.”

3. GST Council in its 9th meeting held on 16.01.2017 had discussed and made recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action as recorded at para 28 of Agenda note no. 3 in the minutes of the meeting which reads as follows:

“viii. Both the Central and State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain”

4. References have been received that there are varied practices in the field regarding the issuance of recurring Show Cause Notices (SCNs). There is no clarity about the administration or authority who will issue the recurring Show Cause Notices arising out of investigation initiated and finalized by Central Tax authorities to taxpayers under State Administration and vice versa. In some cases, the authority which initiates the investigation is also issuing recurring SCN whereas in some cases, it is being left for the concerned jurisdictional Tax authority, who is administering the taxpayer, to issue recurring SCN. This may create confusion and may lead to a situation in which none of the authorities issue the recurring SCN in timely manner and therefore, there is a need to have a uniform practice in

such matters.

5. Recommendations of the Law Committee

5.1 The issue has been deliberated in the Law Committee in its various meetings. On the issue of cross-empowerment in enforcement action, Law Committee has recommended that:

“A taxpayer located within a State is open to enforcement action by both authorities. For example, an enforcement action against a taxpayer assigned to State can be initiated by the Central authorities (and vice versa). In such cases, all consequential action relating to such case including, but not limited to, appeal, review, adjudication, rectification, revision will lie with the authority which had initiated the enforcement action i.e. the Central authorities in the instant case.

Further refund in such cases may be granted only by jurisdictional tax authority, administering the taxpayer.”

5.2 On the issue of issuance of recurring Show Cause Notice, the Law Committee has recommended that:

“It may be more appropriate that the recurring SCNs may be issued by the concerned jurisdictional tax authorities administering the taxpayer, i.e. even if investigation is conducted by Central tax authorities and initial SCN is issued by them, the recurring SCN may be issued only by the jurisdictional tax authority administering the taxpayer and if the such jurisdictional tax authority is state tax, the recurring SCN may be issued by the concerned State tax authority. Since issuance of recurring SCNs does not involve any fresh investigation as the subject matter as well as ground of SCN remain the same, it may be desirable that such further/ recurring SCNs are issued by the actual jurisdictional authorities (which is responsible for assessment of returns of the taxpayer), as they will be in a position to access the records and returns of the taxpayers, and to check whether the grounds of SCN still exist or not and take a view/ action for issuance of recurring SCN, based on facts in the said period. Besides, if the same authority who has taken enforcement based action (but does not administer the said taxpayer) is mandated to issue recurring SCN also, it will put unnecessary burden on the investigating tax authority to keep a track on subsequent practice of the taxpayer after conclusion of investigation and to collect all the data and records for issuance of recurring SCN.”

6. Accordingly, the recommendations of the Law Committee as detailed in para 5 above, are placed before the GST Council for approval.

Agenda Item 3(iv): Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices

A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as “fake invoices”), in order to enable the recipients of such invoices to avail and utilize input tax credit fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), in respect of such transactions involving fake invoices.

2. The matter of issuing a circular for clarifying various issues related to fake invoice was deliberated by the Law Committee. It was deliberated that some fundamental principles for deciding the nature of demand and penal action to be taken against the persons involved in such unscrupulous activities may be clarified in the circular through questions and answers, and the said principles can be considered for actual action in a case, depending upon the specific facts and circumstances of the case. The Law Committee in its meeting held on 11.04.2022, approved the draft Circular which is enclosed as **Annexure A**.

3. Accordingly, the agenda note is placed before the GST Council for deliberation and approval.

Draft Circular No. /2022-GST

F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated.....2022

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 various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices–Reg

A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as “fake invoices”), in order to enable the recipients of such invoices to avail and utilize input tax credit (hereinafter referred to as “ITC”) fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), in respect of such transactions involving fake invoices. 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;

Sl. No.	Issues	Clarification
1.	In case where a registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both, whether such	Since there is only an issuance of tax invoice by the registered person ‘A’ to registered person ‘B’ without the underlying supply of goods or services or both, therefore, such an

	<p>transaction will be covered as “supply” under section 7 of CGST Act and whether any demand and recovery can be made from ‘A’ in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act.</p> <p>Also, whether any penal action can be taken against registered person ‘A’ in such cases.</p>	<p>activity does not satisfy the criteria of “supply”, as defined under section 7 of the CGST Act. As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against ‘A’ for the said transaction, and accordingly, no demand and recovery is required to be made against ‘A’ under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against ‘A’ in respect of the said transaction.</p> <p>The registered person ‘A’ shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</p>
2.	<p>A registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by ‘A’, for payment of his tax liability in respect of his said outward supplies. Whether ‘B’ will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>Since the registered person ‘B’ has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.</p> <p>Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against ‘B’ under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on ‘B’ under any other provisions of CGST Act, including under section 122.</p>
3.	<p>A registered person ‘A’ has issued tax invoice to another registered person ‘B’ without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person ‘C’ by issuing</p>	<p>In this case, the input tax credit availed by ‘B’ in his electronic credit ledger on the basis of tax invoice issued by ‘A’, without actual receipt of goods or services or both, has been utilized by ‘B’ for passing on of input tax credit by issuing tax invoice to ‘C’ without any underlying supply of goods or services or</p>

	<p>invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</p>
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2. The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

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

4. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)

Principal Commissioner (GST)

Agenda Item 3 (v): Notifying clause (c) of section 110 and section 111 of the Finance Act, 2022

A. Notifying Section 111 of Finance Act, 2022 relating to amendment in Section 50(3) of CGST Act

1.1 Vide Section 111 of the Finance Act, 2022, sub- section (3) of section 50 of the CGST Act, 2017 is proposed to be amended retrospectively w.e.f. 01.07.2017 as follows:

~~(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, and the interest shall be calculated, in such manner as may be prescribed.”.

Thus, as is clear from above, the legislative intent behind carrying out the amendment to section 50(3) is to clarify that, as such, it is not the entire ITC availed, but only the utilized 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 will determine the applicability of interest in terms of proviso to section 50(3) of the CGST Act, 2017.

1.2 Further, vide Section 116 of the Finance Act, 2022, Notification 13/2017- Central Tax dated 28th June 2017 has been amended to provide that rate of interest chargeable under sub-section (3) of section 50 of CGST Act shall be 18% (instead of 24%) with retrospective effect from 01.07.2017.

1.3 As per the sub-section (2) of section 1 of the Finance Act 2022, the amendment made via Section 100 to 114 of the Finance Act, 2022 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. In this regard, a date when these provisions of the Finance Act, 2022 pertaining to the CGST Act, 2017 shall come into the force has to be determined by the Council. However, it is felt that early notification of the retrospective amendment of sub-section (3) of section 50 of CGST Act, 2017 (proposed vide section 111 of Finance Act 2022) will provide clarity to all the taxpayers as well as tax officers and remove ambiguities regarding chargeability of interest in respect of the wrongly availed ITC, which will help in reducing avoidable litigations and finalization/closure of past cases on this issue. It is, therefore, proposed that section 111 of Finance Act 2022, providing for retrospective amendment of sub-section (3) of section 50 of CGST Act (with effect from 01.07.2017) may be notified by the Centre at the earliest.

2. Framing of rules for the calculation of interest in terms of provisions of Section 50 of CGST Act, 2017

2.1 Sub-section 2 of section 50 mentions that the manner of calculation of interest to be paid under sub-section (1) of Section 50 of CGST Act has to be prescribed through Rules. The said rule has not been prescribed till now. Therefore, there is a need to frame the requisite rule for the implementation of the said provision.

2.2 Further, as the proposed sub-section (3) of Section 50 provides that the manner of calculation of interest payable as per the said sub-section is to be prescribed through rules, for which the requisite rule is also required to be framed.

2.3 The Law Committee in its meeting held on 07.05.2022 has recommended that a new rule 88B may be inserted in CGST Rules as below:

88B. Manner of calculating interest on delayed payment of tax;

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with 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, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of Section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of Section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilized in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilized, for the period starting from the date of utilization of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under sub-section (3) of section 50.

Explanation. —For the purposes of this sub-rule—

- (1) Input tax credit wrongly availed shall be construed to have been utilized, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilization of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.
- (2) The date of utilization of such input tax credit shall be taken to be—
 - (a) the date, on which the return is due to be furnished under section 39, or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or
 - (b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases

2.4 It was also recommended by Law Committee that the aforementioned draft rule shall be finalized in consultation with the Ministry of Law and Justice. Law Committee also recommended that the above rule should be notified with retrospective effect i.e. 01.07.2017.

B. Notifying clause (c) of section 110 of the Finance Act, 2022

3.1 Vide clause (c) of section 110 of the Finance Act 2022, sub-section (10) of section 49 of CGST Act is substituted to provide for transfer of any balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person. As there is no provision of transfer of any amount from or to SGST / UTGST electronic cash ledger, the amendment is required to be **notified only by the Centre and is not required to be notified by States/ UTs**. As the said provision is for

ease of doing business and to provide for increased cash flow to the business, **it is proposed that the same may be notified by the Centre at the earliest based on the readiness of functionality by GSTN.**

3.2 In order to implement the said amendment, requisite rules are also required to be framed. Accordingly, Law Committee in its meeting held on 08.06.2022 recommended **insertion of a sub-rule (14) in rule 87** of CGST Rules to allow for transfer of unutilized balance in CGST & IGST cash ledger to a distinct person, without going through refund procedure, subject to the condition that such transfer will not be allowed if unpaid liability exists in the electronic liability register of the said registered person. The sub-rule as recommended by the Law Committee is reproduced below:

“87. Electronic Cash Ledger. -

(14) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in FORM GST PMT-09:

Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.”

3.3 Law Committee also recommended amendment in **FORM GST PMT –09**, as shown in **red** below:

FORM GST PMT –09 <i>[See rule 87(13), 87(14)]</i>																																																	
Transfer of amount from one account head to another in electronic cash ledger																																																	
1.	GSTIN																																																
2.	(a) Legal name	<Auto>																																															
	(b) Trade name, if any	<Auto>																																															
3.	ARN																																																
4.	Date of ARN																																																
4A.	GSTIN of transferee on the same PAN																																																
5. Details of the amount to be transferred from one account head to another <div style="text-align: center;">(Amount in Rs.)</div> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: center;">Amount to be transferred from</th> <th colspan="3" style="text-align: center;">Amount to be transferred to</th> </tr> <tr> <th style="width: 16.6%;">Major head</th> <th style="width: 16.6%;">Minor head</th> <th style="width: 16.6%;">Amount available</th> <th style="width: 16.6%;">Major Head</th> <th style="width: 16.6%;">Minor head</th> <th style="width: 16.6%;">Amount transferred</th> </tr> <tr> <th style="text-align: center;">1</th> <th style="text-align: center;">2</th> <th style="text-align: center;">3</th> <th style="text-align: center;">4</th> <th style="text-align: center;">5</th> <th style="text-align: center;">6</th> </tr> </thead> <tbody> <tr> <td rowspan="6" style="vertical-align: top;"><Central tax, State/ UT tax, Integrated tax, Cess></td> <td>Tax</td> <td></td> <td rowspan="6" style="vertical-align: top;"><Central tax, State / UT tax Integrated tax, Cess></td> <td>Tax</td> <td></td> </tr> <tr> <td>Interest</td> <td></td> <td>Interest</td> <td></td> </tr> <tr> <td>Penalty</td> <td></td> <td>Penalty</td> <td></td> </tr> <tr> <td>Fee</td> <td></td> <td>Fee</td> <td></td> </tr> <tr> <td>Others</td> <td></td> <td>Others</td> <td></td> </tr> <tr> <td>Total</td> <td></td> <td>Total</td> <td></td> </tr> </tbody> </table>						Amount to be transferred from			Amount to be transferred to			Major head	Minor head	Amount available	Major Head	Minor head	Amount transferred	1	2	3	4	5	6	<Central tax, State/ UT tax, Integrated tax, Cess>	Tax		<Central tax, State / UT tax Integrated tax, Cess>	Tax		Interest		Interest		Penalty		Penalty		Fee		Fee		Others		Others		Total		Total	
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6. Verification <p>I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>Place</p> <p>Date</p> </div> <div style="width: 50%; text-align: right;"> <p>Signature</p> <p>Name of Authorized Signatory</p> <p>Designation /Status</p> </div> </div> <p style="margin-top: 20px;">Instructions -</p> <p>1. Major head refers to - Integrated tax, Central tax, State/UT tax and Cess.</p>																																																	

2. Minor head refers to – tax, interest, penalty, fee and others.
3. The form may be filled up if amount from one major / minor head is intended to be transferred to another major/minor head. Minor head for transfer of amount may be same or different.
4. The amount from one minor head can also be transferred to another minor head under the same major head.
5. Amount can be transferred from the head only if balance under that head is available at the time of transfer.
6. Amount available in cash ledger under CGST / IGST head can be transferred to any other taxpayer registered on the same PAN under CGST/IGST head, if required.
7. Amount shall not be allowed to be transferred if unpaid liability exists in the Electronic Liability Register of the transferor.

4. The Council may also decide from which date other provisions of the Finance Act, 2022 pertaining to GST may be notified by the Centre and the States/ UTs.
5. Accordingly, the agenda is placed before the GST Council for deliberation and approval.

Agenda Item 3(vi): Issuance of clarification on various issues pertaining to GST

A. Clarification on the issues pertaining to refund claimed by the recipients of supplies regarded as deemed export

1.1 Reference is invited to para 2 of Circular No.147/03/2021-GST dated 12.03.2021 vide which the para 41 of Circular No.125/44/2019-GST dated 18.11.2019 was amended to remove the restriction from availing the ITC of the tax paid on the deemed export supply by the recipient when the refund of tax paid on such deemed export is claimed by the recipient. The said restriction was removed in order to enable the recipient of the deemed export supply to file refund due to the requirement of portal to debit the amount claimed as refund from the electronic credit ledger. Para 41 of Circular No. 125/44/2019-GST dated 18.11.2019, as amended by Circular No. 147/03/2021-GST dated 12.03.2021, reads as under:

*“41. Certain supplies of goods have been notified as deemed exports vide Notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89 (1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017-Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and ~~that he has not availed input tax credit on such invoices~~ **the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period.** The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.”*

1.2 In view of the above, it can be stated that the recipient is required to first claim input tax credit (ITC) of the tax paid on deemed export supply in his return and at the time of filing of application for refund of such amount, recipient is required to deduct such amount from his electronic credit ledger. Further, in order to ensure that no excess refund is claimed, the circular provides for a restriction that the refund amount shall not exceed the amount of input tax credit availed by the recipient in his valid return.

1.3 As the recipient has been allowed to avail ITC of the tax paid on the deemed export supplies for the purpose of claiming refund vide Circular No. 147/03/2021-GST dated 12.03.2021, the ITC so availed becomes the part of total ITC availed by the said recipient during the said tax period. Doubts have been raised by the field formations regarding applicability of the provisions of Chapter V of the CGST Act, 2017 for such availment of ITC by the recipient on the tax paid on deemed export supply and regarding the calculation of “Net ITC” under the provisions of rule 89(4) and rule 89(5) of the CGST Rules, in such cases where the recipient of deemed export supply claims ITC on the tax paid on such supply, for the purpose of claiming refund of such tax paid.

1.4 The said issues were deliberated by the Law Committee and it was recommended that following two issues may be clarified through a circular:

- (i) Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017?
- (ii) Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the “Net ITC” for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017?

Clarifications, as recommended by the Law Committee, are covered at Sl. No 1 and 2 of the draft Circular enclosed with the agenda note.

B. Clarification on various issues of section 17(5) of the CGST Act and supply by employer to employees

2.1 Section 17(5) of the CGST Act restricts the availment of ITC in respect of certain cases and in this regard, the following provision was made in section 17(5)(b), effective from the 1st day of July, 2017:

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

(a)

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

.....”

2.2 Subsequently, above provision was substituted by the Central Goods and Services Tax (Amendment) Act, 2018 and the following provision was brought into force with effect from 1st February, 2019.

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

(a)

(aa)

(ab)

(b) the following supply of goods or services or both—

- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, **leasing, renting or hiring of motor vehicles, vessels or aircraft** referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (ii) membership of a club, health and fitness centre; and
- (iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c)”

2.3.1 In the context of section 17(5) of the CGST Act, various doubts have been raised by the field formations as to -

- i. whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?
- ii. whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act bar availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft” or ITC on input services by way of any type of leasing is barred under the said provisions?

2.3.2. Doubts have also been raised regarding the taxability of various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee.

2.4 Law Committee in its meeting dated 11.04.2022 deliberated on the issue and recommended that the issue may be clarified through a circular that –

- i. proviso after sub-clause (iii) of section 17(5)(b) of CGST Act is applicable for all sub-clauses (i), (ii) & (iii) of section 17(5)(b);
- ii. “leasing” referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 **refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items;**
- iii. supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST [this aspect was earlier made known to the public through press release dated 10.07.2017]

Clarifications, as recommended by the Law Committee are covered at Sl. No 3, 4 and 5 of the draft Circular enclosed with the agenda note.

C. Clarification on utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities

3.1 Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities in terms of the provisions of the CGST Act.

3.2 Law Committee had deliberated on the issues in its meeting dated 07.05.2022 and recommended to issue a clarification on usage of electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities in terms of the provisions of the CGST Act. Clarifications, as recommended by the Law Committee are covered at Sl. No 6, 7 and 8 of the draft Circular enclosed with the agenda note

4. The agenda note along with the draft circular (enclosed as Annexure) is placed before the GST Council for deliberation and approval.

Circular No. XXX/XX/2022-GST

F. No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the , 2022

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 various issue pertaining to GST- reg.

Various representations have been received from the field formations seeking clarification on certain issues with respect to –

- i. refund claimed by the recipients of supplies regarded as deemed export;
- ii. interpretation of section 17(5) of the CGST Act;
- iii. perquisites provided by employer to the employees as per contractual agreement; and
- iv. utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

2. In order to clarify the issue 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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarify the issues as under:

S. No.	Issue	Clarification
Refund claimed by the recipients of supplies regarded as deemed export		
1.	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017?	The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such

		refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
2.	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the “Net ITC” for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017?	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the “Net ITC” for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.
Clarification on various issues of section 17(5) of the CGST Act		
3.	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	<ol style="list-style-type: none"> 1. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under: <i>“Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”</i> 2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified <i>“that scope of input tax credit is being widened, and it would now be made</i>

		<p><i>available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.</i></p> <p>3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.</p>
4.	Whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act bar availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft” or ITC on input services by way of any type of leasing is barred under the said provisions?	<p>1. Sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act provides that ITC shall not be available in respect of following supply of goods or services or both—</p> <p><i>“(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:</i></p> <p><i>Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply”</i></p> <p>2. It is clarified that “leasing” referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.</p>
Perquisites provided by employer to the employees as per contractual agreement		
5.	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	<p>1. Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in</p>

		<p>relation to employment.</p> <p>2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.</p>
Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities		
6.	Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?	<p>1. In terms of sub – section (4) of section 49 of CGST Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”), subject to the provisions relating to the order of utilisation of input tax credit as laid down in section 49B of the CGST Act read with rule 88A of the CGST Rules.</p> <p>2. Sub-rule (2) of rule 86 of the CGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B of the CGST Act.</p> <p>3. Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act) is defined in clause (82) of section 2 of the CGST Act as the <u>tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism</u>.</p> <p>4. Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.</p> <p>5. It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for</p>

		making payment of any tax which is payable under reverse charge mechanism.
7.	Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?	As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
8.	Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?	As per sub – section (3) of section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

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

4. 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(vii): Issue of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, 2017 and allowing Composition dealers to use E-Commerce platforms

Various references and representations have been received, including from Ministry of MSME, Ministry of Textiles, Department for Promotion of Industry & Internal Trade (DPIIT), Confederation of All India Traders (CAIT), NASSCOM, etc. regarding challenges being faced by small traders in supplying the goods and services through electronic commerce operator (hereinafter referred to as “ECOs”). The representations seek relaxations from the requirement of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the Central Goods and Services Tax Act, 2017 (in short “CGST Act”). Requests have also been made for allowing Composition dealers to supply through ECOs.

2. Issue of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, irrespective of aggregate annual turnover:

2.1 It has been represented that the mandatory registration requirement for every supplier supplying goods through ECOs under section 24(ix) of the CGST Act, irrespective of the aggregate annual turnover, has resulted in huge disparity between online and offline sellers. The online sellers, even if having aggregate turnover well below the threshold limit, are required to get compulsorily registered under the existing provisions of CGST Act thereby discouraging MSMEs, including small artisans and women entrepreneurs, from supplying goods and services through ECOs. Requests have been made by various associations to remove the provision of compulsory registration for small businesses / suppliers / MSMEs supplying through ECOs in order to bring them at par with other offline suppliers. It has been stated that the compulsory registration provision is not giving a level playing field to taxpayers below the threshold turnover of Rs 40/ 20 lakhs, who make supplies through e-commerce operators.

2.2 Similar proposals have been received from Ministry of MSMEs, Ministry of Textiles, Department for Promotion of Industry & Internal Trade (DPIIT) and NITI Aayog for reconsideration of the said provisions of section 24(ix) of the CGST Act since it makes a distinction between online sellers and offline sellers, as while the suppliers supplying through ECOs (online suppliers) are required to take compulsory registration even if their aggregate annual turnover is below the threshold limit of Rs 40 Lakh/ Rs 20 Lakh, the sellers who operate offline are allowed exemption from registration for supply of goods and/or services up to Rs. 40 Lakh/ Rs. 20 Lakh. It has been suggested that suppliers supplying goods and services through ECOs may also be allowed exemption from registration upto this threshold limit of aggregate turnover, on par with offline sellers. It has also been suggested that Permanent Account Number (PAN) based authentication can be introduced for such unregistered persons making supplies through e-commerce platforms. PAN may be made mandatory for on-boarding of such unregistered sellers on ECO platforms and a PAN based reporting may be introduced in the hands of the ECOs. This will enable the authorities to track the PAN based turnover of a particular seller across multiple ECOs.

3. Issue of restriction imposed under section 10(2)(d) of the CGST Act on composition dealers for not allowing them to supply through E-Commerce operators:

3.1 Representations have also been received requesting for allowing Composition dealers to use E-Commerce platforms. The composition scheme available as per section 10 of the CGST Act cannot be opted by registered persons supplying goods or services on e-commerce platforms, by virtue of exception carved out under section 10(2)(d) of the CGST Act. As a result, there is again lack of parity

between online and offline sellers, thereby discouraging small sellers from operating on e-commerce platforms. It has been represented that Composition scheme should be allowed for small and mid-size sellers operating through online marketplaces with TCS of 1% still being complied with by the e-commerce operator.

4. Relevant provisions of the CGST Act are detailed as below:

4.1 Section 22(1) of the CGST Act provides for requirement of registration.

“Persons liable for registration. — (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

*Provided that where such person makes taxable supplies of goods or services or both from any of the **special category States**, he shall be liable to be registered if his aggregate turnover in a financial year **exceeds ten lakh rupees:***

Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified:

*Provided also that the Government may, at the request of a State and on the recommendations of the Council, **enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods**, subject to such conditions and limitations, as may be notified:*

Explanation. — For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.”

4.2. Section 24 of the CGST Act provides for compulsory registration in certain cases.

“24. Compulsory registration in certain cases. — Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, —

(i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

(iii) persons who are required to pay tax under reverse charge;

.....

(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

....”

Accordingly, in terms of clause (ix) of section 24 of the CGST Act, persons supplying goods or services or both through ECOs, who are required to collect tax at source under section 52, are compulsory required to obtain registration, irrespective of annual aggregate turnover.

4.3 Section 23(2) of the CGST Act provides power to the Government to exempt a class of person from obtaining registration.

“23. Persons not liable for registration. — (1) The following persons shall not be liable to registration, namely: —

.....

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.”

4.4 Section 10 of the CGST Act provides for eligibility and conditions for opting to pay tax under composition scheme. Sub-section (2) of section 10 of the Act is reproduced hereunder:

(2) The registered person shall be eligible to opt under sub-section (1), if: —

- (a) save as provided in sub-section (1), he is not engaged in the supply of services;**
- (b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;**
- (c) he is not engaged in making any inter-State outward supplies of goods or services;**
- (d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;**
- (e)**

Accordingly, in terms of section 10(2)(d) of the CGST Act, persons supplying goods or services or both through ECOs, who are required to collect tax at source under section 52, are not eligible for opt for composition scheme. Similar provision exists under section 10(2A) (c) of the CGST Act.

4.5 It may be pertinent to mention that in terms of sub-section (2) of section 23 of the CGST Act, the Government has exempted **persons supplying services through e-commerce operators** for taking compulsory registration and such persons are entitled to avail the threshold exemption *vide* notification No. 65/2017-Central tax dated 15.11.2017. In effect, as the provisions of GST Laws stand now, only the **persons supplying goods through ECOs are compulsory required to obtain registration, irrespective of their aggregate annual turnover.**

5. Examination of the issues

5.1 The issues have been examined. The increasing digitalisation of the economy has fundamentally changed the nature of retail distribution channels for sales of goods and services/intangibles to private consumers (business-to-consumer or B2C sales). E - Commerce Operator platforms have emerged as the major hub or channel for the continuously expanding volume of e-

commerce sales. Further, the impact of COVID pandemic has also provided a push factor for small traders to supply through the ECOs. Accordingly, there appears to be a need to support such small traders/ suppliers/ entrepreneurs/ artisans who are supplying goods through e-commerce operators, and provide them parity with offline suppliers, as far as taxation is concerned.

5.2 Further, the composition levy scheme has been made specifically for small taxpayers which ensures a simple and hassle-free compliance scheme. Such taxpayer does not have to maintain elaborate records and instead of regular monthly returns, which a normal taxpayer has to file under GST, he has to file a simple annual return in **FORM GSTR-04** and pay taxes on certain percentage of his turnover of **taxable supplies** of goods and services in the State or Union territory, on quarterly basis through **CMP-08**. Accordingly, it appears that the restriction imposed under section 10(2)(d) of the CGST Act on persons supplying goods or services or both through ECOs from opting for composition scheme merits review.

5.3 In this context, the tax administration so far has been constrained in allowing unregistered persons and composition dealers to supply through ECOs for a variety of reasons. First of all, for persons supplying through offline mode, registration is mandatory for making inter-state supplies. Similarly, composition dealers are not allowed to make inter-state supplies. If unregistered persons and composition dealers are to be allowed to supply through ECOs, ensuring that they make only intra-state supplies through such ECOs is essential to maintain parity between offline and online suppliers. Further, as the unregistered persons are not required to declare principal place of business, it becomes another challenge to keep track of supplies made through ECOs by such unregistered persons. Hence, adequate resolution of such concerns may be required if unregistered persons / composition dealers are allowed to make supplies through ECOs.

6. Recommendations of the Law Committee

6.1 The demands of trade and association and suggestions of various Ministries/ Departments, as detailed in para 2 and 3 above, appear relevant. **The Law Committee deliberated the issue and has recommended the following proposals as detailed in para 6.2 to 6.4**, which would resolve the issues highlighted in these references/ representations regarding the disparity faced by such smaller online sellers to a large extent and will also address the concerns of tax administration as discussed in para 5.3 above.

6.2 In respect of supplier supplying goods through ECOs who are required to be mandatorily registered under section 24(ix) of the CGST Act, 2017: Provide exemption from mandatory registration under section 23(2) of the CGST Act for class of suppliers making supplies of goods through E-commerce operators, subject to conditions that –

- a. The exemption is available upto aggregate turnover on all India basis not exceeding the turnover specified under sub-section (1) of section 22 of the CGST Act and notifications issued thereunder.

[Similar exemption was provided for Casual taxable persons, making taxable supply of handicrafts goods, from obtaining registration under CGST Act vide Notification No.32/2017-Central Tax dated 15th September, 2017 & amendment made vide Notification No.38/2017-CT dated 13th October,2017. Further, in terms of sub-section (2) of section 23 of the CGST Act, the Government has exempted persons supplying services through e-commerce operators for taking compulsory registration and such persons are entitled to

avail the threshold exemption vide notification No. 65/2017-Central tax dated 15.11.2017.];

- b. **they shall not make any inter-State taxable supply;**
- c. they would be mandatorily required to declare their Permanent Account Number (PAN) and Principal place of business.
- d. **For each PAN, such unregistered person shall be restricted to declare principal place of business in only One State.**
- e. The ECO would be required to declare the supplies made by unregistered persons through them in FORM GSTR-8 statement (by inserting a suitable table in it). ECO would also be mandated to ensure that no inter-State supply through them is allowed in respect of such unregistered persons by making necessary checks and validations on their system/platform; failing which the penalty would be imposable on ECO.

Needless to mention that ECO will not be required to deduct any TCS in respect of such supplies made by unregistered persons through them.

6.3 Law Committee has also discussed the basic modalities for enabling unregistered person to make supply through ECOs. The same is enclosed as **Annexure** to this agenda note.

6.4 In respect of composition dealers who are restricted under section 10(2)(d) of the CGST Act from making supplies through E-Commerce operators: Make a special procedure under section 148 of the CGST Act, for persons supplying through ECOs to opt for composition scheme by fulfilling all other eligibility conditions provided under section 10(1) and (2) or section 10(2A), as the case may be, of the CGST Act. Rate of tax for goods or services has already been prescribed for composition taxpayers. This may be subject to conditions such as the following:

- (a) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;
- (b) he is **not engaged in making any inter-State outward supplies** of goods or services;
- (c) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council
- (d) he is neither a casual taxable person nor a non-resident taxable person.

[In this regard, it is submitted that vide Notification No. 66/2017-CT dated 15.11.2017, in exercise of such powers under section 148, taxpayers were exempted from payment of tax on advances received in case of supply of goods. A similar exercise of powers under section 148 may be carried out for persons supplying through ECOs to opt for composition scheme as proposed above]

6.4.1 Further, ECO would be required to declare the supplies made by such composition dealers through them through existing GSTR-8 statement (by inserting a suitable table in it, if required). ECO would also be mandated to ensure that no inter-State supply through them is allowed in respect of composition dealers by making necessary checks and validations on their system/platform

6.4.2 Whenever a registered person supplies goods/services through e-commerce operator, TCS collected by e-commerce operator would be credited to electronic cash ledger of the of the composition dealer supplying goods/services. Given that composition sellers are required to remit taxes in cash only, they can then make payment of GST on outward supplies using TCS balance available in the electronic cash ledger. This will have no bearing on the working capital of the such composition dealers. From a compliance perspective, it would encourage small sellers to adopt GST compliances effectively, since composition dealers are exempt from maintenance of elaborate accounts and records. Instead, they have to file a simple quarterly return.

7.1 By the measures proposed in para 6 above, parity will be ensured between online and offline suppliers, which will give a major push to Ease of doing business especially for micro and small businesses, artisans and women entrepreneurs working from homes by enabling them to sell their products through ECO platforms. Such on-boarding of the smallest of the MSMEs on to e-commerce platforms would yield rich dividends in terms of opening up employment and business opportunities to small and micro enterprises in remote areas of the country. The unorganised sectors, especially in the rural and semi-rural parts of the country, will benefit immensely from these proposed measures.

7.2 Simultaneously, the said proposals also safeguard concerns of revenue as the unregistered suppliers would declare at the time of their onboarding on e-commerce platform, their Permanent Account Number (PAN) and Principal place of business. The ECOs would also declare the supplies made by unregistered persons through them, besides ensuring that no inter-state supply is allowed in respect of such unregistered persons and composition dealers. As such, the availability of information of the supplies being made by unregistered person (based on their PAN) through various ECOs, along with other requisite checks as proposed, will only boost the compliance further, leading to revenue augmentation.

8. The recommendations of the Law Committee, as detailed in para 6 above, are placed before the GST Council for deliberation and approval. **Once in-principle approval to the proposal is accorded by the GST Council, Law Committee may be authorized to draft appropriate rules, notifications, special procedures etc.**

Modalities for enabling unregistered person to make supply through ECOs

1. Declaration at the time of on-boarding:

- a) Declaration can be obtained from unregistered person desiring to make intra-State supplies through ECOs in a specified **FORM XX**, at the time of onboarding on ECO platform.
- b) Such declaration may be made **on GST portal** through PAN based login. Two-way authentication may be desired – PAN verification as in the case of registration; and Aadhaar authentication of the declarant in specified cases.
- c) Declaration in **FORM XX** would, inter-alia, contain the place(s) of business, Email Address, Mobile Number, Constitution of Business, turnover of preceding FY etc.
- d) Validations would be made in **FORM XX** to ensure that all the places of business declared by the declarant are in the same State / UT.

2. Integration with ECOs

- a) The declarations made on the portal to be transmitted to ECOs through API or through any suitable means (to be explored by GSTN)
- b) ECO will ensure that supplies by unregistered persons through them are not allowed UNTIL and UNLESS the declaration filed by such person has been acknowledged by the portal.

3. Geo-location restrictions:

- a) ECOs would be required to place a check on pin code (both bill to and ship to) to be in the same state as that of the seller. For example, M/s. ABC, an unregistered dealer based out of Maharashtra, should not be allowed to make supplies if the pin code of the recipient (bill to or ship to) is of other state.
- b) ECO should be held responsible to ensure that unregistered dealers are only allowed to make intra-state supplies through its platform.
- c) Penal provision may have to be incorporated for imposing penalty on ECOs, in case of inter-State supply made by unregistered person through them.

This will address the concern that there are no instances of inter-State supplies through ECOs in respect of such unregistered dealers.

4. Changes in reporting requirement under FORM GSTR-8

- a) Every ECO would be required to report supplies made by unregistered persons through them on monthly basis.
- b) Currently ECO furnishes monthly statement in **FORM GSTR-8** whereby seller GSTIN-wise supplies are reported. **FORM GSTR-8** would be required to be amended by inserting a suitable table to provide for PAN based reporting in respect of supplies made by unregistered persons.

Once in-principle approval to the proposal is accorded by the GST Council, appropriate rules, notifications, special procedures etc. would be required to be drafted by the Law Committee, in consultation with GSTN.

Agenda Item 3(viii): Refund of unutilised Input Tax Credit on account of Export of Electricity

Reference has been received from Ministry of Power wherein they have highlighted the problem faced in filing of refund of unutilised Input Tax Credit (ITC) in account of export of electricity and has requested to expedite the refund of input tax credit to exporting generators.

2. As per section 16(2) of IGST Act, 2017, credit of ITC is available for making zero rated supplies, even if such supply is an exempted supply. Though the 'electrical energy' has been wholly exempted from levy of GST, however, being zero rated supply, the registered person exporting electricity is eligible to seek refund of unutilized ITC. However, the following issues are being faced by the exporters of electricity while filing refund claim of unutilized ITC:

2.1 As per the provisions of sub-rule (2) of Rule 89 of the CGST Rules, the claimant is required to furnish the details of shipping bill or bill of export along with the refund application. Clause (b) of sub-rule (2) of Rule 89 of CGST Rules is reproduced below as under:

*“(b) a statement containing **the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods;**”*

2.2 Further, the claimant is also required to furnish EGM details in the statement referred above. However, electricity being an intangible good, **the export of electricity is neither covered by any Shipping Bill/ Bill of export nor is there any requirement of filing EGM in respect of export of electricity**, due to which the exporters of electricity are not be able to file the refund claim of unutilized ITC on the GST Portal.

3. The export/import of electricity is regulated by Central Electricity Regulatory Commission (CERC), a statutory body functioning under section 76 of the Electricity Act, 2003. CERC has issued Guidelines for Import/Export (Cross Border) of Electricity, 2018 and the Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations, 2019. These guidelines and regulations regulate the cross-border trade of electricity, under which consent from the Central Electricity Authority (CEA), Ministry of Power, Government of India is required to export electricity. Further, the **Regional Power Committee**, constituted by the CEA, issues a monthly report i.e. **the Regional Energy Account (REA)** to show the number of units of electricity exported. Since the mechanism to regulate the export of electricity was already in place, the matter was examined in consultation with Ministry of Power, Government of India to examine whether the same mechanism can be adopted to establish the export of electricity for the purpose of GST.

4. It was informed by the Ministry of Power that for the purpose of electricity generation and drawal, **scheduled energy** is treated as deemed produced/ delivered and any deviation from scheduled energy is treated under the provisions of CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2014. Accordingly, they have proposed that **quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, can be used as proof of export of electricity and can be considered for calculating the value of zero-rated supply in case of export of electricity**. Further, Ministry of Power has informed that Central Electricity Authority (CEA) will instruct the RPC Secretariats to issue a statement of scheduled energy for exported electricity by Generation Plants **(in the format enclosed as Annexure-I) as a part of the monthly Regional Energy Account (REA) issued by Regional Power Committee**

(RPC) Secretariat, which will also be uploaded on the websites of RPC Secretariat. Such monthly REA can be downloaded by GST officers as well as the concerned electricity generator for the purpose of refund under Rule 89(4) of CGST Rules 2019.

5. In order to calculate the refund of unutilised input tax credit in respect of zero-rated supply of the electricity, the turnover of electricity exported may be calculated on the basis of scheduled electricity exported (as per details available in monthly REAs referred above) and the tariff per unit for electricity exported (as per agreed contracted rates). It may be noted that as electricity has been wholly exempted from the levy of GST, therefore, as per the definition of adjusted total turnover provided at clause (E) of the sub-rule (4) of rule 89, the turnover of electricity supplied domestically is required to be excluded while calculating the adjusted total turnover. Further, in terms of sub-section (2) of section 17 of CGST Act, 2017, the ITC attributable to exempt supplies is not available to the supplier thereby meaning that the supplier is not eligible to avail ITC of the tax paid on inward supplies of goods and services used for effecting such outward exempt supply of electricity domestically. Therefore, “Net ITC” in the above formula would also not include the ITC attributable to such exempt domestic supply of electricity. In cases where the exporter of electricity is not having any other outward supply under the same GSTIN, “Net ITC” will be the ITC availed on inward supplies (inputs and inputs services) used in supply of electricity which is exported.

5.1 Usually, the quantum of electricity exported as specified in the statement of scheduled energy exported and on invoice should be same. However, in certain cases, it might happen that the quantum of electricity exported as mentioned on invoice is different from the quantum of electricity exported mentioned on the statement of scheduled energy uploaded with REA on Regional Power Committee website. In such cases, turnover of export of electricity may be calculated using the **lower of the quantum of electricity** exported mentioned on the statement of scheduled energy exported and that mentioned on the invoice issued on account of export of electricity.

6. It is also mentioned that export of electricity happens through transmission lines which are laid either underground or on pillars attached/fixed to the ground thereby meaning that it can be considered that the export of electricity is taking place by land. Further, relevant date in case of export of goods by land, has been specified at Explanation (2)(a)(ii) under Section 54 of the CGST Act, 2017 as the date on which such goods pass the frontier. Considering the intangible nature of supply of electricity, it may not be possible to determine the actual date on which the specific unit of electricity exported can be considered as passing the frontier. Therefore, as suggested by Ministry of Power, it is proposed to **consider the last date of the month, in which energy has been exported as per monthly REA, as date on which the electricity exported has passed the frontier**. The same may be clarified in the circular, proposed to be issued, as detailed in para 8.

7. Further, to enable the electricity exporter to apply for unutilised ITC, the following amendments may be made in the CGST Rules, 2017:

(A) Amendment in clause (b) of sub-rule (2) of rule 89 of CGST Rules, 2017

*“(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods, **other than electricity**,”*

(B) Insert the following clause after clause (b) of sub-rule (2) of rule 89 of CGST Rules, 2017:

“(ba) A statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement along with copy of statement of scheduled energy for exported electricity by Generation Plants issued by Regional Power Committee Secretariat as a part of Regional Energy Account (REA) under Regulation 2(1)(nnn) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;

(C) Insert the following Statement in **FORM GST RFD-01**:

Statement 3B [Rule 89 (2)(ba)]

Refund Type: Export of electricity without payment of tax (accumulated ITC)

S.No.	Invoice/Document Details				REA Details					Tariff per Unit in Rs. (As per agreement)	Units exported (Lower of cl. No 5 and 10)	Value of electricity exported in Rs. (11 x 12)
	Type of Document	No.	Date	Energy exported (Units)	Generating Station	Period	Ref. No.	Date	Scheduled Energy Exported (Units)			
1	2	3	4	5	6	7	8	9	10	11	12	13

7.1 Till the time such statement is developed and deployed on the portal, the exporter of electricity may be allowed to file refund claim on account of export of electricity in “Any Other category”, in **FORM GST RFD-01**, along with details in statement 3B and 3A (in pdf format).

8. Law Committee deliberated the issue in its meeting held on 09.03.2022 and has recommended amendment in Rules as detailed in para 7 above and for issuance of a circular clarifying various issues and procedure for filing of refund claim pertaining to export of electricity. The draft circular is placed as “**Annexure-II**”.

9. The agenda note along with the draft circular, as recommended by the Law Committee, is placed before the GST Council for approval.

Annexure-I**Statement of Scheduled Energy for exported electricity by Generation Plants (Using Fuel except nuclear, gas, domestic linkage coal, mix fuel) for claiming Input Tax Credit**

1. Month in which electricity was exported : (mmm/yyyy)
2. Name of Generating Station and Location : (insert name of Generating station, District, State)
3. Name of Company : (insert name of Company)
4. GSTIN of Company : (insert GSTIN of Company)
5. Installed capacity of Generating Station : (insert Installed capacity in MW)
6. Connection point, State and region : (specify “STU/ISTS” – insert name of sub-station), state, region

7. Details of the Scheduled Energy during the month:

Domestic	
Name of Domestic Entity	Scheduled Energy in (MU)
(buyer entity 1)	de1
(buyer entity 2)	de2
(PX)	de3
--	--
(buyerentityN)	deN
Subtotal Domestic Sale (A)	Sum of (de1+de2+.....+deN)
Cross Border	
Country 1_entity1	ee1
Country 2_entity2	ee2
--	--
CountryN_entity3	eeN
Subtotal Export (B)	Sum of (ee1+ee2+....+eeN)
Total Scheduled Energy of Generating Station (C=A+B)	(insert sum of subtotal-A and subtotal-B)

Note: As per Complementary Commercial Mechanism under Section 6.1 (d) of CERC (Indian Electricity Grid Code) Regulations, 2010; beneficiaries shall pay energy charges for the scheduled dispatch, in accordance with the relevant contracts/ orders of CERC.

F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the , 2022

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)

Madam/Sir,

Subject: Manner of filing refund of unutilized ITC on account of export of electricity – reg.

Reference has been received from Ministry of Power regarding the problem being faced by power generating units in filing of refund of unutilised Input Tax Credit (ITC) on account of export of electricity. It has been represented that though electricity is classified as “goods” in GST, there is no requirement for filing of Shipping Bill/ Bill of Export in respect of export of electricity. However, the extant provisions under Rule 89 of CGST Rules, 2017 provided for requirement of furnishing the details of shipping bill/ bill of export in respect of such refund of unutilised ITC in respect of export of goods. Accordingly, a clause (ba) has been inserted in sub-rule (2) of rule 89 and a Statement 3B has been inserted in **FORM GST RFD-01** of the CGST Rules, 2017 vide Notification No. **XX/2022-CT** dated **XX/XX/2022**. In order to clarify various issues and procedure for filing of refund claim pertaining to export of electricity, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby prescribes the following procedure for filing and processing of refund of unutilised ITC on account of export of electricity:

2. Filing of refund claim:

2.1 Till the time necessary changes are carried out on the portal, the applicant would be required to file the application for refund under “**Any Other**” category electronically in **FORM GST RFD-01**, on the portal. In remark column of the application, the taxpayer would enter “Export of electricity- without payment of tax (accumulated ITC)”. At this stage, the applicant is not required to make any debit from the electronic credit ledger.

2.2 The applicant would be required to furnish/upload the details contained in Statement 3B (and not in statement 3) of **FORM GST RFD-01** (in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.

2.3 The applicant will also be required to upload the copy of **statement of scheduled energy for electricity exported by the Generation Plants** (in format attached as Annexure-I) issued as part of

Regional Energy Account by Regional Power Committee Secretariat (“RPC”) under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010, for the period for which refund has been claimed and the copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported. The applicant will also give details of calculation of the refund amount in Statement -3A of **FORM GST RFD-01** by uploading the same in pdf format along with refund application in **FORM GST RFD-01**.

3. Relevant date for filing of refund:

As per sub-section (1) of section 54 of the CGST Act, 2017, time period of two years from the relevant date has been specified for filing an application of refund. Electrical energy is in nature of “goods” under GST and is exported on a continuous basis through the transmission lines attached to the land. Therefore, it is not possible to determine the specific date on which a specific unit of electricity passes through the frontier. However, a statement of scheduled energy for export of electricity by a Generation Plant is issued by Regional Power Committee RPC Secretariat, as a part of Regional Energy Account (hereinafter referred to as “REA”) under Regulation 2(1)(nnn) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. Accordingly, it is hereby clarified that in case of export of electricity, the relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the Regional Power Committee Secretariat under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010.

4. Processing of refund claim by proper officer

4.1 Rule 89(4) provides for the formula for calculation of refund of unutilised ITC on account of zero-rated supplies which is reproduced as under:

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

Export of electricity being zero-rated supply, refund of unutilised ITC on account of export of electricity would also be calculated using the same formula.

4.2 The turnover of export of electricity would be calculated by multiplying the energy exported during the period of refund with the tariff per unit of electricity, specified in the agreement. It is clarified that **quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month and will be used for calculating the value of zero-rated supply in case of export of electricity. Such monthly Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, as uploaded on the websites of RPC Secretariat, can be downloaded by GST officers as well as the concerned electricity generator for the purpose of refund under Rule 89(4) of CGST Rules 2019. The calculation of the value of the exports of electricity during the month, can be done based on the quantity of scheduled electricity exported during the month by the exporter (as detailed in the REA for the month) and the tariff rate per unit (details of which will have to be provided by the concerned exporter based on agreed contracted rates).**

4.3 It is also mentioned that usually, the quantum of electricity exported as specified in the statement of scheduled energy exported and on invoice should be same. However, in certain cases, it might happen that the quantum of electricity exported as mentioned on invoice is different from the quantum of electricity exported mentioned on the statement of scheduled energy uploaded with REA on Regional Power Committee website. In such cases, turnover of export of electricity shall be calculated using the lower of the quantum of electricity exported mentioned on the statement of scheduled energy exported and that mentioned on the invoice issued on account of export of electricity.

4.4 Adjusted Total Turnover shall be calculated as per the clause (E) of sub-rule (4) of rule 89. However, as electricity has been wholly exempted from the levy of GST, therefore, as per the definition of adjusted total turnover provided at clause (E) of the sub-rule (4) of rule 89, the turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover. The proper officer shall invariably verify that no ITC has been availed on the inputs and inputs services utilised in making domestic supply of electricity.

4.5 The proper officer shall calculate the admissible refund amount as per the formula provided under Rule 89(4) and as per the clarification furnished above. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through **FORM GST DRC-03**. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**.

5. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in).

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 3(ix): Annual Returns for FY 2021-22

Section 44 of the CGST Act provides for filing of Annual Return (FORM GSTR-9/9A) and Annual Reconciliation Statement (FORM GSTR-9C) by specified taxpayers for every financial year. *Vide* Notification no. 56/2019 –CT dated 14th November, 2019, the Annual Return FORM GSTR-9 & Annual Reconciliation Statement FORM GSTR-9C were simplified for the Financial Years 2017-18 & 2018-19 by making few entries optional. Further, *vide* Notification No. 79/2020-CT dated 15th October, 2020, said forms were simplified for the Financial Year 2019-20 as well by making few entries/tables optional. **Moreover, the said forms for FY 2020-21 were simplified *vide* Notification No. 30/2021-CT dated 30.07.2021.**

2. Rule 80 of the CGST Rules, 2017 was amended in light of the amendments in section 35(5) and section 44 of the CGST Act. In terms of amended provisions, -

(i) the filing of annual return (in **FORM GSTR-9 /9A**) for the **FY 2020-21** was exempted for taxpayers having aggregate annual turnover upto two crore rupees, *vide* notification No. 31/2021- CT, dated 30.07.2021;

(iii) the requirement for filing self-certified reconciliation statement in **FORM GSTR-9C** has been made for those taxpayers whose aggregate annual turnover is more than Rs. 5 Crores (refer rule 80(3) of the CGST Rules);

(iii) the Annual Return forms for **FY 2020-21** were simplified *vide* Notification No. 30/2021-CT dated 30.07.2021, making few tables as optional.

3.1 In light of the same, the Law Committee in its meeting held on 23.03.2022 discussed and examined changes in Annual Return forms. It has been suggested that in a long run, the annual return should cover the features of proposed changes in **FORM GSTR-3B**, as suggested by the Law Committee. However, as the FY 2021-22 is over, there may be demand to notify the Annual Return forms for FY 2021-22 at the earliest. Accordingly, the Law Committee was of the view that the annual return forms (FORM GSTR-9 and FORM GSTR-9C) for FY 2021-22 may be notified with minimal changes to the forms notified for FY 2020-21. The Law Committee examined the relaxations provided in FY 2020-21 and has recommended modifications / continuation / discontinuation of such relaxations based on their present relevance. The said recommendations of the Law Committee are enclosed as **Annexure** to this note. The portion where the relaxations are proposed to be discontinued are shown in **red**.

3.2 Law Committee has also recommended that AATO threshold for granting exemption from filing annual return in **FORM GSTR-9/9A**, which was Rs. 2 crores for FY 2020-21, may be continued for FY 2021-22 also.

4. The issue is placed before the GST Council for deliberation and approval.

RECOMMENDATIONS OF LAW COMMITTEE ON ANNUAL RETURN FORMS

Table 1: Simplification of FORM GSTR-9		
Table No.	Details of relaxations in previous FYs	Recommendations of Law Committee
4I to 4L	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to either file 4B to 4E net of credit notes/debit notes/ amendments or report such details separately in 4I to 4L.	It has been informed by GSTN that tables 4B to 4E and tables 4I to 4L are being separately auto-populated from relevant tables of GSTR-1. Therefore, the relaxation may not be continued for FY 2021-22.
5D, 5E and 5F	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to either separately report his supplies as exempted, nil rated and non-GST supply or report consolidated information for all these three heads in the “exempted” row only.	Consolidated value may be given for 5D and 5E. Separate reporting for 5F may be sought.
5H to 5K	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to fill Table 5A to 5F net of credit notes/debit notes/ amendments or report such details separately in 5H to 5K.	The relaxation may be continued for FY 2021-22 as there is marginal or no revenue implication.
6B, 6C, 6D and 6E	2017-18 & 2018-19: The registered person was given an option to either report the breakup of input tax credit as inputs, capital goods and input services or report the entire input tax credit under the “inputs” row only. 2019-20 & 2020-21: The registered person was required to report the breakup of input tax credit as capital goods and was given an option to either report the breakup of the remaining amount as inputs and input services or report the entire remaining amount under the “inputs” row only.	The relaxation on the pattern of 2020-21 may be continued for 2021-22.
	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to either report Table 6C (RCM supplies from unregistered persons) and 6D (RCM supplies from registered persons) separately or report the consolidated details of Table 6C and 6D in Table 6D only.	
7A to 7E	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to either fill his information on reversals separately in Table 7A to 7E or report the entire amount of reversal under Table 7H only. However, reversals on account of TRAN-1 credit (Table 7F) and TRAN-2 (Table 7G) were to be mandatorily reported.	The relaxation may be continued for FY 2021-22.

12 and 13	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill these tables. ➤ It was felt that this information is not essential for the tax administration.	The relaxation may be continued for FY 2021-22.
15	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill this table. ➤ It was felt that tax administration already has all the data on refund and demands for the taxpayers.	The data is already available with tax officer in the form of MIS reports. Therefore, the relaxation on the pattern of 2020-21 may be continued for 2021-22.
16A, 16B and 16C	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill these tables.	The relaxation may be continued for FY 2021-22.
17	FY 2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill this table.	With effect from the 1st April, 2021, it has been made mandatory for a taxpayer, having turnover of more than five crore rupees in the preceding financial year, to furnish 6 digits HSN/ SAC code on the invoices issued for supplies of taxable goods and services. A taxpayer having turnover of upto five crore in the preceding financial year is required to furnish 4 digits HSN code on B2B invoices. Accordingly, instructions and requirements of table 17 may be aligned with these HSN requirements. The relaxation may not be continued for FY 2021-22.
18	FY 2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill this table.	Since HSN details are not communicated in GSTR-2A, and HSN requirements for

		suppliers may be different from that for the annual return filer, it may be difficult for the annual return filer to reconcile HSN wise details of inward supplies. Therefore, the relaxation may be continued for FY 2021-22.
Table 2: Simplification of FORM GSTR-9C		
Table No.	Details of relaxations in previous FYs	Recommendations of Law Committee
Table No.	Details	Recommendations
5B to 5N	<p>2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill these tables. If any adjustments were required to be reported, then the same could be reported in Table 5O.</p> <p>➤ It was felt that a number of big companies which have a presence in multiple States face a lot of challenges in reporting State wise unbilled revenue, unadjusted advances, deemed supply details, etc. It was also felt that, from an indirect tax administration point of view, this data may not be required. In fact, this table was to act as a pointer of the adjustments that taxpayers need to make to derive GST turnover from income tax / audited financial turnover. Since, filing this data was a challenge, it was recommended that taxpayers may be given an option to either file the data row wise or directly report all adjustments through table 5O (adjustment tab).</p>	The relaxation may be continued for FY 2021-22.
Table 12B and 12C	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill these tables.	The data in 12B and 12C may now be sought separately for FY 2021-22 as the same would help to reconcile the input tax credit reported in the audited financial statement with the input tax credit taken in the GST returns
Table 14	<p>2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill this table.</p> <p>➤ Trade and industry have widely represented that neither the internal accounts nor the audited financial statements mandate maintaining of expense-head wise input tax credit.</p>	The relaxation on the pattern of 2020-21 may be continued for 2021-22.

Agenda Item 3(x): Clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1

The process of return filing has been simplified over a period of time. W.e.f. 12.12.2020, **FORM GSTR-3B** is getting auto-generated on the portal by way of auto-population of input tax credit (ITC) from **FORM GSTR-2B** (auto-generated inward supply statement) and auto-population of liabilities from **FORM GSTR-1** (Outward supply statement), with an editing facility to the registered person. However, it has been observed that there still are some infirmities in information being furnished by the registered person in relation to inter-State supplies effected to unregistered person, registered person paying tax under section 10 of the CGST Act (composition taxable persons) and UIN holders. Also, there appears to be lack of clarity regarding reporting of information about reversal of Input Tax Credit (hereinafter referred to as the “ITC”) as well as ineligible ITC in Table 4 of **FORM GSTR-3B**.

2. It is desirable that correct reporting of information is done by the registered person in **FORM GSTR-3B** and **FORM GSTR-1** so as to ensure correct accountal and accurate settlement of funds between the Central and State Governments. In order to clarify the issue regarding information to be furnished by the registered person in **FORM GSTR-3B** and **FORM GSTR-1**, the Law Committee in its meeting held on 07.05.2022 approved the draft Circular which is enclosed to this note as **Annexure A**. Further, Law Committee also recommended that settlement of reversals of ITC and ineligible ITC to be done on the basis of Table 4(B)(1) and 4(D)(2) of **FORM GSTR-3B**. Law Committee has also suggested label changes in FORM GSTR-3B which is detailed in separate agenda on CGST Rule amendment.

3. Accordingly, the agenda note is placed before the GST Council for deliberation and approval.

Circular No. / /2021-GST

F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the April, 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: Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1 –reg.

The process of return filing has been simplified over a period of time. With effect from December 2020, **FORM GSTR-3B** is getting auto-generated on the portal by way of auto-population of input tax credit (ITC) from **FORM GSTR-2B** (auto-generated inward supply statement) and auto-population of liabilities from **FORM GSTR-1** (Outward supply statement), with an editing facility to the registered person. However, it has been observed that there still are some infirmities in information being furnished by the registered person in relation to inter-State supplies effected to unregistered person, registered person paying tax under section 10 of the CGST Act (composition taxable persons) and UIN holders. Also, there appears to be lack of clarity regarding reporting of information about reversal of Input Tax Credit (hereinafter referred to as the “ITC”) as well as ineligible ITC in Table 4 of **FORM GSTR-3B**.

2. It is desirable that correct reporting of information is done by the registered person in **FORM GSTR-3B** and **FORM GSTR-1** so as to ensure correct accountal and accurate settlement of funds between the Central and State Governments. Accordingly, in order to ensure uniformity in return filing, the Board, in exercise of its powers conferred under sub-section (1) of section 168 of the CGST Act, hereby clarifies various issues in succeeding paragraphs.

3. Furnishing of information regarding inter-State supplies made to unregistered persons, composition taxable persons and UIN holders:

3.1 It has been noticed that a number of registered persons are not reporting the correct details of inter-State supplies made to unregistered persons, to registered person paying tax under section 10 of the CGST Act (composition taxable persons) and to UIN holders, as required to be declared in Table 3.2 of **FORM GSTR-3B**, under the notion that the taxable value of the same along with tax payable has already been reported in Table 3.1 of the said **FORM**.

3.2 In this context, it may be noted that the information sought in Table 3.2 of **FORM GSTR-3B** is required to be furnished, **place of supply-wise**, even though the details of said supplies are already part of the supplies declared in Table 3.1 of the said **FORM**. For assisting the registered persons, Table 3.2 of **FORM GSTR-3B** is being auto-populated on the portal based on the details furnished by them in their **FORM GSTR-1**.

3.3 Accordingly, it is hereby advised that the registered persons making inter-State supplies -

(i) to the unregistered persons, shall also report the details of such supplies, **place of supply-wise**, in Table 3.2 of **FORM GSTR-3B** and Table 7B or Table 5 of **FORM GSTR-1**, as the case may be;

(ii) to the registered persons paying tax under section 10 of the SGST/CGST Act (composition taxable persons) and to UIN holders, shall also report the details of such supplies, **place of supply-wise**, in Table 3.2 of **FORM GSTR-3B** and Table 4A or 4C of **FORM GSTR-1**, as the case may be, as mandated by the law.

3.4 It is further advised that any amendment carried out in Table 9 or Table 10 of **FORM GSTR-1** or any entry in Table 11 of **FORM GSTR-1** relating to such supplies should also be given effect to while reporting the figures in Table 3.2 of **FORM GSTR-3B**.

4. Furnishing of information regarding ITC availed, reversal thereof and ineligible ITC in Table 4 of GSTR-3B

4.1 Table 4(A) of the **FORM GSTR-3B** is getting auto-populated from various entries of **FORM GSTR-2B**. However, various reversals of ITC on account of rule 42 and 43 of the CGST Rules or for any other reasons are required to be made by the registered person, on his own ascertainment, in Table 4(B) of the said **FORM**. It has been observed that different practices are being followed to report ineligible ITC as well as various reversals of ITC in **FORM GSTR-3B**.

4.2 It may be noted that the amount of Net ITC Available as per Table 4(C) of **FORM GSTR-3B** gets credited into the electronic credit ledger (ECL) of the registered person. **Therefore, it is important that any reversal of ITC or any ITC which is ineligible under any provision of the CGST Act should not be part of Net ITC Available in Table 4(C) and accordingly, should not get credited into the ECL of the registered person.**

4.3 In this context, it is pertinent to mention that the facility of static month-wise auto-drafted statement in **FORM GSTR-2B** for all registered persons has been introduced from August, 2020. The statement provides invoice-wise total details of ITC available to the registered person including the details of the ITC on account of import of goods. Further, details of the said statement are auto-populated in Table 4 of return in **FORM GSTR-3B** which are editable in the hands of registered person. **It may be noted that the entire set of data that is available in FORM GSTR-2B is carried to the table 4 in FORM GSTR-3B, except for the details regarding ITC that is not available to the registered person either on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply.** It is pertinent to mention that the ineligible ITC, which was earlier not part of calculation of eligible/available ITC, is now part of calculation of eligible/available ITC in view of auto-population of Table 4(A) of **FORM GSTR-3B** from various tables of **FORM GSTR-2B**. Thereafter, the registered person is required to identify ineligible ITC as well as the reversal of ITC to arrive at the Net ITC available, which is to be credited to the ECL. In

light of the above, the procedure to be followed by registered person is being detailed hereunder for correct reporting of information in the return:

- A. Total ITC (eligible as well as ineligible) is being auto-populated from statement in **FORM GSTR-2B** in different fields of Table 4A of **FORM GSTR-3B** (*except for the ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply*).
- B. Registered person will report reversal of ITC, which are absolute in nature and are not reclaimable, such as on account of rule 38 (reversal of credit by a banking company or a financial institution), rule 42 (reversal on input and input services on account of supply of exempted goods or services), rule 43 (reversal on capital goods on account of supply of exempted goods or services) of the CGST Rules and for reporting ineligible ITC under section 17(5) of the CGST Act in **Table 4 (B) (1)**.
- C. Registered person will report reversal of ITC, which are not permanent in nature and can be reclaimed in future subject to fulfilment of specific conditions, such as on account of rule 37 of CGST Rules (non-payment of consideration to supplier within 180 days), section 16(2)(b) and section 16(2)(c) of the CGST Act in **Table 4 (B) (2)**. Such ITC may be reclaimed in **Table 4(A)(5)** on fulfilment of necessary conditions. Further, all such reclaimed ITC shall also be shown in **Table 4(D)(1)**. **Table 4 (B) (2)** may also be used by registered person for reversal of any ITC availed in **Table 4(A)** in previous tax periods because of some inadvertent mistake.
- D. Therefore, the net ITC Available will be calculated in Table 4 (C) which is as per the formula $(4A - [4B (1) + 4B (2)])$ and same will be credited to the ECL of the registered person.
- E. **As the details of ineligible ITC under section 17(5) are being provided in Table 4(B), no further details of such ineligible ITC will be required to be provided in Table 4(D)(1).**
- F. **ITC not available, on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply, may be reported by the registered person in Table 4D(2). Such details are available in Table 4 of FORM GSTR-2B**

4.4 Accordingly, it is clarified that the reversal of ITC of ineligible credit under section 17(5) or any other provisions of the CGST Act and rules thereunder is required to be made under Table 4(B) and not under Table 4(D) of FORM GSTR-3B.

4.5 For ease of understanding, the manner of reversals is being elucidated in the illustrations enclosed as **Annexure** to this Circular.

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

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

(Sanjay Mangal)
Principal Commissioner (GST)

Annexure to Circular

Illustration I:

1. A Registered person M/s ABC is a manufacturer (supplier) of goods. He supplies both taxable as well as exempted goods. In a specific month, say April, 2022, he has received input and input services as detailed in Table 1 below. The details of auto-population of Input Tax Credit on all Inward Supplies in various rows of Table 4 (A) of FORM GSTR-3B are shown in column (7) of the Table 1 below:

Table 1

S. No	Details	IGST	CGST	SGST	Total	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	ITC on Import of goods	1,00,000	-	-	1,00,000	Auto-populated in Table 4(A)(1)
2	ITC on Import of Services	50,000	-	-	50,000	
3	ITC on Inward Supplies under RCM	-	25,000	25,000	50,000	Auto-populated in Table 4(A)(3)
4	ITC on Inward Supplies from ISD	50,000	-	-	50,000	Auto-populated in Table 4(A)(4)
5	ITC on other inward supplies	2,00,000	1,50,000	1,50,000	5,00,000	Auto-populated in Table 4(A)(5)
6	Total	4,00,000	1,75,000	1,75,000	7,50,000	
Other relevant facts: Note 1: Of the other inward supplies mentioned in row (5), M/s ABC has received goods on which ITC is barred under section 17(5) of the CGST Act having integrated tax of Rs. 50,000/- Note 2: In terms of rule 42 and 43 of the CGST Rules, M/s ABC is required to reverse ITC of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax. Note 3: M/s ABC had not received the supply during April, 2022 in respect of an invoice for an inwards supply auto-populated in row (5) having integrated tax of Rs. 10,000/-. Note 4: M/s ABC has reversed ITC of Rs. 500/- central tax and Rs. 500/- state tax on account of Rule 37 i.e. where consideration was not paid to the supplier within 180 days. Note 5: An amount of ITC of Rs 10,000/ central Tax and Rs 10,000/- state tax, ineligible on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, has not been auto-populated in Table 4(A) of FORM GSTR-3B from GSTR-2B.						

2. Based on the facts mentioned in Table 1 above, M/s ABC is required to avail ITC after making necessary reversals in Table 4 of FORM GSTR-3B as detailed in Table 2 below:

Table 2

4. Eligible ITC				
Details	IGST	CGST	SGST/ UTGST	Explanation
1	2	3	4	
(A) ITC Available (whether in full or part)	----	----	----	
1. Import of Goods	1,00,000	----	----	
2. Import of Services	50,000	----	----	
3. Inward Supplies liable to Reverse Charge (other than 1 & 2 above)	----	25,000	25,000	
4. Inward Supplies from ISD	50,000	----	----	
5. All other ITC	2,00,000	1,50,000	1,50,000	
(B) ITC Reversed / Reduced	----	----	----	
1. Reversal of ITC as per rule 42 and 43 of CGST Rules	125,500	52,000	52,000	1. Refer para 4.3 (B) of circular 2. Reversal of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax under rule 42 and 43 [Note 2] 3. Ineligible ITC of Integrated tax of Rs. 50,000/- under section 17(5) [Note 1]
2. Others	10,000	500	500	1. Refer para 4.3 (C) of circular 2. Reversal of integrated tax of Rs. 10,000/-, where supply is not received [Note 3] 3. Reversal of ITC of Rs 500/- central tax and Rs 500/- state tax on account of Rule 37 [Note 4]
(C) Net ITC Available (A)-(B)	2,64,500	122500	122500	C=A1+A2+A3+A4+A5-B1-B2
(D) Ineligible ITC				
1. As per section 17(5)	-	-	-	1. Refer para 4.3 (E) of circular

				2. Reversals under section 17(5) are not required to be shown in this row. The same are to be shown under 4(B)(1)
2. Others		10,000	10,000	<ol style="list-style-type: none"> 1. Refer para 4.3(F) of circular 2. Ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, which has not been auto-populated in Table 4(A) of GSTR-3B

Agenda Item 3(xi): Comprehensive changes/amendments in FORM GSTR-3B

A proposal for amendment in **FORM GSTR-3B** was deliberated in the Law Committee meeting held on 14.12.2020. Subsequently, a sub-committee of officers was constituted by the Law Committee to deliberate on issues pertaining to IGST settlement and ITC reversals. The said sub-committee of officers submitted its report on various data requirement for the purpose of IGST settlement under section 17 of the IGST Act, 2017. A note was also received from Gujarat on issues relating to unutilized balance in IGST fund and changes in format of GSTR-3B required for the purpose of IGST settlement.

2. Accordingly, a comprehensive study has been done in respect of the return required to be filed under section 39 of the CGST Act by considering *inter alia* various representations and suggestions received over a period of time. Brief history of return filing under GST, amendments made in the Finance Act, 2022 in respect of the provisions related to Returns and elaborate proposal for changes in **FORM GSTR-3B** are discussed below. **The proposed changes ensure that the GSTR1-GSTR2B linkage remains intact and as far as possible, the GSTR-3B should be auto-generated consequent to furnishing details in FORM GSTR-1.**

A. Brief history of return filing under GST:

1. 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. However, GSTR-1-2-3 model were kept in abeyance. Instead, as an interim measure, a summary return in **FORM GSTR-3B** was introduced, along with the statement of outward supplies in **FORM GSTR-1**.
2. Subsequently, a new return system was envisaged (ANX-1/ ANX-II and RET-01). Section 43A was also inserted into the CGST Act vide CGST Amendment Act, 2018. However, section 43A was not notified.
3. In the 39th meeting of the GST Council, it was recommended that the transition to the new return system may be made in an incremental manner by:-
 - i. the linking of the input tax credit in **FORM GSTR-3B** to the details of the supplies reflected in the **FORM GSTR-2A**;
 - ii. linking of the details of the statement of outward supplies in **FORM GSTR-1** to the liability in **FORM GSTR-3B**.
4. In the 42nd GST Council meeting, 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.**

B. Amendment recommended by the Council in the provisions related to Returns:

Amendments in CGST Act were recommended by the GST Council in its 43rd meeting to align the GST Law with the GSTR-1/ 2B/ 3B return filing system. The salient features of proposed return filing are as below:

- i. Filing of **FORM GSTR-1** to be mandatory before filing of return in **FORM GSTR-3B**;
- ii. Filing of **FORM GSTR-1** to be sequential;
- iii. No two-way communication while filing return;

- iv. Provision of furnishing of details of inward supplies to be removed, instead **FORM GSTR-2B** (static return) shall be made available to recipients;
- v. Restrictions in ITC to extend where details of the Input Tax Credit of such supplies which have not been communicated to the registered persons
- vi. Provisions for Spike Rules to be incorporated in Section 37 & 38

Accordingly, based on the recommendations of GST Council, amendments have been made in the return related provisions of the CGST Act, through the Finance Act, 2022 and will come into effect once the said provisions of the Finance Act, 2022 are notified.

C. Major demands by taxpayers in GSTR-3B:

- i. It has been a long pending demand of trade and industry to allow amendment in FORM GSTR-3B. At present, any omission or mistake made while filing a GSTR-3B return, can be rectified in the return to be furnished for the month/ tax period during which such omission or mistake are noticed. Such rectifications/ adjustments can be made upto due date of filing return for September of the next year, or the date of filing annual return, whichever is earlier.
- ii. In exceptional circumstances, sometimes value of credit notes issued by a supplier exceeds value of invoices and debit notes issued by him during a tax period. This leads to net negative value of supplies for the taxpayer in the said tax period. Presently, negative values are not allowed to be reported in any table of **GSTR-3B**. Similarly, recipient may have to report negative values in ITC table due to receipt of credit notes in a month whose value is more than the total ITC available for the month. Trade and industry have been asking the facility of reporting negative values since long.
- iii. There is currently no clarity with respect to reporting of various kind of reversals of ITC in specific rows of FORM GSTR-3B. Ineligible ITC as per section 17(5) has to be reported in Table 4(D). However, while some taxpayers report it in Table 4(D), others just take net ITC (after reducing ineligible credit) in Table 4(A).
- iv. Taxpayers face difficulty in reconciling various reversals and subsequent reclaims of ITC. Reversal may be required due to conditions such as goods not received/ non-payment of consideration within 180 days. However, ITC reversed may be reclaimed later. Currently, no specific rows for such reversals and reclaims is provided which makes reconciliation difficult for the taxpayer.

D. Major demands for better tax administration:

- i. Auto-population of values from GSTR-1 into GSTR-3B in specific rows: This would establish one-to-one correspondence to a large extent between rows of GSTR-1 & GSTR-3B, thereby providing clarity to the taxpayer and tax officers.
- ii. Restricting editing of values auto-populated in GSTR-3B from GSTR-1: FORM GSTR-3B may be designed such that going forward it may be feasible to put restriction on editing of specific rows in GSTR-3B in line with extant provisions of CGST Act.
- iii. Streamlining the process of settlement of IGST revenues: The ITC reversed needs to be considered for Settlement of IGST. Further, amendments made by taxpayer in those details which are required for settlement purpose (viz.in Table-3.2 or section 17(5) reversals etc.) needs to be captured for ensuring accurate settlement of IGST revenues. Distinction must be made between:
 - a. the ITC reversed which need not be reclaimed in future; and
 - b. the ITC which is reversed but may be claimed in future.
- iv. Line-wise entry in **FORM GSTR-3B** will facilitate the process of scrutiny and audit by the tax administration due to availability of better quality of data. This will in turn help in revenue mobilization efforts of tax administration.

E. Present FORM GSTR-3B structure:

- i. Auto drafted Input Tax Credit statement in **FORM GSTR-2B** has been made available to the taxpayer w.e.f. August 2020 containing all data regarding ITC available based on B2B supplies received from other persons, imports, ISD and RCM supplies
- ii. 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) respectively has been started w.e.f. December 2020 which has simplified the return filing.
- iii. Red Flag reports for R1-3B or 2B-3B mismatch introduced in 1st Quarter of 2019.

F. PROPOSAL FOR CHANGES IN FORM GSTR-3B:

Keeping in view the challenges of taxpayers as detailed above and the journey of return enhancements done till date, it is proposed to make changes in the format of GSTR-3B which would cover the following aspects:

- i. **Auto-population of values from GSTR-1 into GSTR-3B in specific rows:** This would establish one-to-one correspondence to a large extent between rows of GSTR-1 & GSTR-3B, thereby providing clarity to the taxpayer and tax officers. Further, it would minimize requirement of user input in GSTR-3B and ease GSTR-3B filing process.
- ii. **Provision for allowing amendment in GSTR-3B vide insertion of various amendment tables for outward supplies, input supplies liable to reverse charge and ITC:** Since **FORM GSTR-1** and **FORM GSTR-2B** have been linked with **FORM GSTR-3B**, it is recommended that amendment in **FORM GSTR-3B**, as far as feasible, should flow from amendment in FORM GSTR-1, as far as outward liabilities are concerned. Even in the new return system which was envisaged, the amendment in RET-1 (RET-1A) was proposed through amendment in details of outward supply (ANX-1/ANX-1A). Therefore, for giving more clarity to the taxpayers, separate amendment table (for liabilities) may be introduced in **FORM GSTR-3B** so that any amendment made in **FORM GSTR-1** gets reflected in **FORM GSTR-3B** clearly. Similarly, an amendment table may also be incorporated in **FORM GSTR-3B** to show any amendment in ITC portion. [*The amendment tables may be activated only on selection by taxpayers*]
- iii. Allowing **negative values in GSTR-3B** & carrying forward the negative values of previous tax period to current tax period.
- iv. Providing specific rows for showing **various reversals and subsequent reclaims of ITC.**
- v. **Streamlining the process of settlement of IGST revenues:** The ITC reversed needs to be considered for Settlement of IGST. Further, amendments made by taxpayer in those details which are required for settlement (viz. in Table-3.2 or section 17(5) reversals etc.) need to be captured for ensuring accurate settlement of IGST revenues. Distinction must be made between:
 - a. the ITC reversed which need not be reclaimed in future; and
 - b. the ITC which is reversed but may be claimed in future.

3. Based on the abovementioned principles, Law Committee in its meeting dated 18.11.2021 and 29.12.2021 approved a draft **FORM GSTR-3B** return which is enclosed to this note as **Annexure A**. Explanatory instructions relating to the draft return are enclosed as **Annexure B**. Law Committee also recommended minor changes in **FORM GSTR-1** which is enclosed to this note as **Annexure C**. **Further, it was decided by the Law Committee that the said draft of GSTR-3B & changes in GSTR-1 may be taken to Council for in-principle**

approval and seeking directions to place the same in public platform for seeking inputs/suggestions of the stakeholders. Based on the feedback received, the matter may be examined by the Law Committee and placed before the GST Council for taking a final decision and implementation thereafter.

4. Accordingly, the agenda note is placed before the GST Council for deliberation and approval.

FORM GSTR-3B
[See rule 61(1)]
Monthly / Quarterly Return

Year	y	y	y	y
Month/ Quarter				

1.	GSTIN																		
2(a).	Legal name of the registered person	<Auto >																	
2(b)	Trade name, if any	<Auto >																	
2(c)	ARN	<Auto >(after filing)																	
2(d)	Date of filing	<Auto >(after filing)																	

3. Details of Outward Supplies and inward supplies liable to reverse charge

Part A: Outward Supplies, inward supplies liable to reverse charge, supplies under section 9(5) and advances received/adjusted

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess	Auto-population logic
1	2	3	4	5	6	
(a) Taxable outward supplies (other than zero rated, deemed export, reverse charge, nil rated, exempted)	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 4A of GSTR-1
(b) Exports	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 6A of GSTR-1
(c) Supplies made to SEZ unit or SEZ developer	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 6B of GSTR-1
(d) Deemed exports	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 6C of GSTR-1
(e) Outward supplies attracting reverse charge	<Auto>	<NIL>	<NIL>	<NIL>	<NIL>	Table 4B of GSTR-1
(f) Inward supplies (liable to reverse charge)						
(1) Import of services	<Manual>	< Manual>	< Manual>	< Manual>	< Manual>	-----

(2) Others	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 3 Part A, Section III, B2B- Invoices of GSTR-2B Table 4 Part A Section III, B2B- Invoices of GSTR-2B
(g) Supplies on which ECO is required to pay tax u/s 9(5) [To be furnished by ECO]	< Auto >	< Auto >	< Auto >	< Auto >	< Auto >	New Table may be inserted in GSTR-1 so that supplies on which ECO is required to pay tax u/s 9(5) may be shown in the said table by ECO
(h) Supplies made through ECO on which ECO is required to pay tax u/s 9(5) [To be furnished by the supplier]	<Auto>	<NIL>	<NIL>	<NIL>	<NIL>	Proposed Table 14 [row (b) to be inserted] of GSTR-1
(i) Other outward supplies (Nil rated, exempted)	<Auto>	<NIL>	<NIL>	<NIL>	<NIL>	Table 8 of GSTR-1
(j) Non-GST outward supplies	<Auto>	<NIL>	<NIL>	<NIL>	<NIL>	Table 8 of GSTR-1
(k) Advances received/Advances adjusted in the current tax period	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 11 Part I of GSTR-1

Part B: Out of the supplies shown in Part-A above, details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders

Nature of Supplies	Place of Supply (State/UT)	Total Taxable value	Amount of Integrated Tax	Auto-population logic
1	2	3	4	
(a)Supplies made to unregistered persons	<Auto>	<Auto>	<Auto>	Table 5 & 7B of GSTR-1
(b) Supplies made to composition taxable persons	<Auto>	<Auto>	<Auto>	Table 4 of GSTR-1
(b) Supplies made to UIN holders	<Auto >	<Auto>	<Auto>	Table 4 of GSTR-1

Part C: Amendment Table

Nature of Supplies	Tax Period to which it pertains	Differential taxable value	Differential Integrated Tax	Differential Central Tax	Differential State/UT Tax	Differential Cess	Place of Supply	Auto-population logic
1	2	3	4	5	6	7	8	
(a) Amendment made in the statement of outward supplies relating to details furnished in Part-A in earlier tax period	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>		Table 9, 10 & 11 of GSTR-1
(b) Amendment to inward supplies attracting reverse charge i.e. row (f) of Part-A furnished in earlier tax period	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>		Table 3 Part A, Section III, B2B-Debit Notes, B2B-Invoices(Amendment), B2B-Debit Notes(Amendment) of GSTR-2B Table 4 Part A Section III, B2B-Debit Notes, B2B-Invoices(Amendment), B2B-Debit Notes(Amendment) of GSTR-2B
(c) Amendments made in the statement of outward supplies relating to details furnished in Part-B in earlier tax period <i>[This being subset of (a), not to be added in tax liability; only required for settlement purpose]</i>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	Table 9 &10 of GSTR-1

Part D: Negative value carried forward from previous tax period

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(a) Negative value carried forward other than (b)	<Auto, NE>	<Auto, NE>	<Auto, NE>	<Auto, NE>	<Auto, NE>
(b) Negative value carried forward in respect of RCM supplies	<Auto, NE>	<Auto, NE>	<Auto, NE>	<Auto, NE>	<Auto, NE>

4. Eligible and ineligible ITC

Description	Integrated Tax	Central Tax	State/UT Tax	Cess	Auto-population
1	2	3	4	5	
(A) ITC Available					
(1) Import of goods	<Auto>	<Auto>	<Auto>	<Auto>	GSTR-2B: Table 3 Part A Section IV
(2) Import of services	<Manual>	<Manual>	<Manual>	<Manual>	-----
(3) Inward supplies liable to reverse charge (other than 2 above)	<Auto>	<Auto>	<Auto>	<Auto>	GSTR-2B: Table 3 Part A Section III
(4) Inward supplies from ISD	<Auto>	<Auto>	<Auto>	<Auto>	GSTR-2B: Table 3 Part A Section II
(5) ITC on Domestic Inwards Supplies excluding 1 to 4	<Auto>	<Auto>	<Auto>	<Auto>	GSTR-2B: Table 3 Part A Section I
(6) ITC reclaimed					
(a) ITC which was reversed in (B)(4)(a) in earlier tax period	<Manual>	<Manual>	<Manual>	<Manual>	-----
(b) ITC which was reversed in (B)(4)(b) in earlier tax period	<Manual>	<Manual>	<Manual>	<Manual>	-----
(c) ITC which was reversed in (B)(4)(c) in earlier tax period	<Manual>	<Manual>	<Manual>	<Manual>	-----
(B) ITC Reversed					
(1) As per rules 38,42 and 43	<Manual>	<Manual>	<Manual>	<Manual>	-----

(2) As per section 17(5)	<Manual>	<Manual>	<Manual>	<Manual>	-----
(3) On account of credit notes in respect of inward supplies	<Auto>	<Auto>	<Auto>	<Auto>	GSTR-2B: Table 3 Part B Section I Table 4 Part B Section I
(4) Others					
(a) On account of section 16(2)(b) i.e. goods/services not received in the current tax period	<Manual>	<Manual>	<Manual>	<Manual>	-----
(b) On account of second proviso to section 16(2)	<Manual>	<Manual>	<Manual>	<Manual>	-----
(c) Others	<Manual>	<Manual>	<Manual>	<Manual>	-----
(C) Net ITC Available [(A) – (B)]	<Auto>	<Auto>	<Auto>	<Auto>	

4A. Amendments to details of ITC available and ITC reversed furnished in earlier tax periods

Description	Tax Period to which it pertains	Differential tax			
		IGST	CGST	SGST/UTGST	Cess
1	2	3	4	5	6
(A) Amendment to ITC available		<Manual>	<Manual>	<Manual>	<Manual>
(B) Amendment to ITC reversed					
(1) As per rules 38,42 and 43		<Manual>	<Manual>	<Manual>	<Manual>
(2) As per section 17(5)		<Manual>	<Manual>	<Manual>	<Manual>

Taxpayer will be able to see the tax period to which the amendment pertains

Taxpayer will be able to select the sub-category of ITC available to be amended from drop-down menu

5. Payment of tax

Description	Tax payable	Paid through ITC				Tax paid TDS./TCS	Tax/Cess paid in cash	Interest	Late Fee
		Integrated Tax	Central Tax	State/UT Tax	Cess				
1	2	3	4	5	6	7	8	9	10
Integrated Tax									
Central Tax									
State/UT Tax									
Cess									

Instructions –

1. Terms used:
 - a. Auto: Auto-populated
 - b. NE: Non-editable
 - c. POS: Place of Supply
2. Table 3 will capture information related to outward supplies and inward supplies liable to reverse charge:
 - a. **Part-A** will contain details of outward supplies, inward supplies liable to reverse charge, supplies under section 9(5) and advances received/adjusted. Any debit/credit notes issued in the current tax period will not be declared here. Further, any amendment to an invoice, including amendment to debit/credit note, pertaining to earlier tax periods will not be reported here. Part-A will be auto-populated from Tables 4, 6, 8, 11 and proposed Table 14 of **FORM GSTR-1** other than row (f) which will be partly auto-populated from **FORM GSTR-2B** and partly user entry.
 - b. **Part-B** will contain details of inter-state outward supplies made to unregistered persons, composition taxable persons and UIN holders out of the supplies declared in Part-A. It will be auto-populated from relevant entries of Table 4, 5 and 7 of **FORM GSTR-1**.
 - c. **Part-C** will contain amendment made to statement of outward supplies relating to details furnished in Part-A and Part-B in earlier tax period and amendment to inward supplies attracting reverse charge furnished in Part-A of earlier tax period.
 - i. Row (a) will contain amendment made in the statement of outward supplies relating to details furnished in rows (a), (b), (c), (d), (e), (g), (h) and (k) of Part-A furnished in earlier tax period. It will be auto-populated from Tables 9, 10 & 11 of GSTR-1 and will be non-editable. This row will be displayed to the taxpayer only if he shows any amendment/debit note/credit note in **FORM GSTR-1**. PoS column of this row will be masked i.e no value will be entered in the PoS column of this row.
 - ii. Row (b) will contain amendment made to inward supplies attracting reverse charge i.e. row (f) of Part-A furnished in earlier tax period. It will be auto-populated from **FORM GSTR-2B**. However, it can be edited by the taxpayer. Further, taxpayer can select the time period to which such amendment pertains. This table will be activated either on selection by taxpayers or if the debit note, amendment to invoice or amendment to debit note is done by the supplier. PoS column of this row will be masked i.e no value will be entered in the PoS column of this row.
 - iii. Row (c) will contain amendment made in the statement of outward supplies relating to details furnished in Part-B furnished in earlier tax period. It will be auto-populated from Tables 9 & 10 of GSTR-1 and will be non-editable. Further, row (c) being a sub-set of row (a), it will not to be added in tax liability. This row will be displayed to the taxpayer only if he shows any amendment/debit note/credit note in **FORM GSTR-1**. Column of Place of Supply of this row will be auto-populated from GSTR-1 and will be non-editable.
 - d. **Part-D** will contain negative value carried forward from previous tax period. It will contain negative value carried forward from previous tax period in respect of RCM supplies and negative value carried forward from previous tax period in respect of non-RCM supplies. It will be non-editable.
3. Unreported invoice i.e. invoice which has not been declared in **FORM GSTR-1** will be declared in Table 3 Part-A and/or Table 3 Part-B as applicable and not in Table 3 Part-C.
4. Table 4 will capture information related to details of ITC. All availment/reclaim in ITC are

to be reported in 4(A) and all reversals in ITC are to be reported in 4(B).

- a. **4(A)** will contain ITC available on account of import of goods, import of services, inward supplies liable to reverse charge (other than import of services), inward supplies from ISD, any other ITC on domestic inwards supplies and any reclaim of ITC. It is to be noted that row (6) i.e. “ITC reclaimed” will contain all reclaims other than the reclaims pertaining to rule 38, 42 & 43 and section 17(5). Details in 4(A) will be auto-populated from **FORM GSTR-2B** other than ITC pertaining to import of services[4(A)(2)] and ITC reclaimed[4(A)(6)] which will both be entered manually by the taxpayer. Details in 4(A)(3) will be auto-populated from **FORM GSTR-2B** in respect of invoices pertaining to supplies received from registered person only and the taxpayer would be required to manually enter the ITC, if any, pertaining to tax paid on supplies received from unregistered person.
 - b. **4(B)** will contain ITC reversed on account of rule 38, 42 & 43, section 17(5), credit notes and other reversals. Other reversals will include such reversals which are not covered under section 17, viz where invoice is received but supply of corresponding goods/services is not yet received, where consideration has not been paid for the said supply within the time specified under second proviso to section 16(2), etc. Once the eligibility conditions for availing ITC are satisfied, the taxpayer can claim the ITC under “ITC reclaimed” category [Table 4(A)(6)]. Entries in 4(B) will be made manually by the user. However, ITC reversed on account of credit notes[4(B)(3)] will be auto-populated from **FORM GSTR-2B**.
 - c. **4(C)** i.e. “Net Liability” will be calculated as difference of values reported in 4(A) and 4(B).
5. Table 4A will contain amendments to details of ITC available and ITC reversed furnished in earlier tax periods. This table will be activated only on selection by taxpayers. Taxpayer will make the entries in this table tax period-wise. While filling Table 4A the following must be ensured:
- a. Any amendment in ITC due to debit/credit notes will be reported in Table 4 and not in Table 4A.
 - b. Further, it is to be noted that any downward/upward revision in reversal of ITC on account of rule 38, 42 & 43, section 17(5) will be reported in table 4A and not in Table 4.
 - c. Any upward amendment/revision in reversal of ITC other than on account of rule 38, 42 & 43, section 17(5) will be reported in row (B)(4) of Table 4 and any downward amendment/revision in reversal of such ITC will be reported in row (A)(6) of Table 4.
 - d. Any upward amendment/revision in reclaim of ITC other than on account of rule 38, 42 & 43, section 17(5) will be reported in row (A)(6) of Table 4 and any downward amendment/revision of such ITC will be reported in row (B)(4) of Table 4.
6. Table 5 i.e. the payment table will be auto-populated from other tables in **FORM GSTR-3B** and will be non-editable.

Proposed changes in GSTR-1:

1. Net of B2C debit note/credit note which are shown in Table 7 of GSTR-1 may be shown in amendment table i.e. Table 10 of GSTR-1 instead.
2. Table 14 proposed by LC may be amended to include supplies made by supplier supplying through ECO on which ECO is required to pay tax u/s 9(5) as follows:

14. Details of the supplies made through e-commerce operators

Nature of Supply	GSTIN of e-commerce operator	Value of supplies made	Value of supplies returned	Net value of supplies	Tax amount			
					Integrated tax	Central tax	State / UT tax	Cess
1	2	3	4	5	6	7	8	9
(a)Supplies made through e-commerce operators liable to collect tax under section 52								
(b)Supplies made through e-commerce operators liable to pay tax under section 9(5)								

3. Table 15 may be introduced to show amendment done in supplies shown in the proposed Table 14.
4. New Table may be inserted in GSTR-1 so that supplies on which ECO is required to pay tax u/s 9(5) may be shown in the said table by ECO. Further, rows/table for amendment done in such supplies may also be incorporated in GSTR-1.

Agenda Item 3(xii): Proposal for amendments to CGST Rules, 2017

Law Committee, in its various meetings, has deliberated upon several issues and has recommended changes in some of the provisions of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”). In addition to the changes in the CGST Rules, some changes in the FORMS have also been recommended by the Law Committee. These changes are discussed below:

I. Amendment to rule 21A:

1.1 In terms of rule 21A(2A) of the CGST Rules, centralised suspension of registration can be made through portal, on recommendation of the GST Council/ GIC. W.e.f. November, 2021, registrations which are liable for cancellation under clause (b) or clause(c) of sub-section (2) of section 29 of the CGST Act, are being suspended centrally through the GST portal on 1st of every month, under sub-rule (2A) of rule 21A of CGST Rules, 2017, **based on their turnover** as below:

- a) Taxpayers where six or more monthly GSTR-3Bs have not been furnished and their turnover/ estimated turnover (AATO) in preceding financial year is more than Rs. 50 lakhs.
- b) Taxpayers where quarterly GSTR-3Bs have not been furnished for two or more quarters and their turnover/ estimated turnover (AATO) in preceding financial year is more than Rs. 50 lakhs.

1.2 Centralized suspension of registration for non-compliance in terms of clause (b) or clause (c) of sub-section (2) of section 29, **irrespective of turnover**, may involve a large number of registrants, and may create operational difficulty in handling such large number of cases of cancellation by tax officers. Accordingly, the proposal of GSTN regarding a system of automatic revocation of suspension in such cases, once all the pending returns are filed on the portal by the taxpayer, was approved by the Law Committee in its meeting dated 08.10.2021 and accordingly, the LC recommended insertion (shown in red color) of second proviso in sub-rule (4) of rule 21A as below:

Rule 21A	
Rule 21A. Suspension of registration.-	
(1)	
(2)	
(3)	
(4)	The suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect:
	Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit:-
	Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-

section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

(5)

II. Amendment to Explanation 1 after rule 43:

2.1 Duty Credit Scrip (DCS) is an incentive scheme which is an export promotion benefit offered by the Government of India under the Foreign Trade Policy (FTP) 2015. Such DCSs are transferrable and GST was required to be paid on its sale / supply. However, w.e.f. October, 2017 [vide notification No. 35/2017-Central Tax (Rate), dated 13-10-2017 (entry No 122A)], the said supply was exempted from GST.

2.2 Various representations have been received from field formations and trade and industry seeking clarification as to whether the registered persons, who make such exempted supply of DCSs, are required to reverse ITC under rule 42 on common inputs and input services used for both taxable (including zero-rated) supply as well as the said exempted supply of DCSs.

2.3 The issue was deliberated by the Law Committee. The Law Committee opined that though supply of MEIS/Duty Credit Scrip by the exporters is an exempt supply under GST, the credit availed on inputs and input services by the exporters for making taxable supplies including zero rated supplies should not be considered as common credit on such taxable supplies and the exempted supply of DCS. Therefore, there should be no requirement of reversal of input tax credit for such exempted supply of DCS by the exporters. Accordingly, the Law Committee recommended that clause (d) may be inserted in Explanation 1 after rule 43 of CGST Rules, 2017 (shown in red color below) to clarify the aforesaid stand.

Explanation 1 after rule 43

Explanation 1: -For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a) [omitted]

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E) dated the 13th October, 2017.

III. Amendment to rule 46:

3.1 The taxpayers having Annual Aggregate Turnover above Rs 20 Cr. have been enabled for e-invoicing on Invoice Registration Portal (IRP). The enablement has been done on the Invoice Registration Portal (IRP) on the basis of the turnover declared by the taxpayers in **FORM GSTR-3B**. Presently, as per various notifications of e-invoicing, certain entities/ sectors of taxpayers such as SEZ, GTA, insurer/banking company, passenger transportation service, government department/local authorities, etc. are exempted from the mandate of e-invoicing. These taxpayers who are otherwise not required to generate e-invoice, have also got enabled and are now requesting for their e-invoice status to be disabled as their recipients seek e-invoice from them instead of regular invoices, causing avoidable business disputes.

3.2 The issue was deliberated by the Law Committee. The Law Committee recommended that rule 46 of the CGST Rules, which provides for particulars to be declared in an invoice, may be amended to specify that invoice shall contain a declaration by the registered person to the effect that invoice is not required to be issued in the manner prescribed under rule 48(4) of the CGST Rules, in all cases where an invoice is issued, other than in the manner under rule 48(4), by the taxpayer having AATO more than the threshold notified for issuance of e-invoice. The proposed amendment to rule 46 is shown in red color below:

Rule 46
46. Tax invoice.-Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,-
(a) ...
...
(r)....
(s) a declaration that invoice is not required to be issued in the manner prescribed under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner under sub-rule (4) of rule 48, by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover notified under sub-rule (4) of rule 48.

IV. Amendment to rule 87:

4.1 Rule 87 (3) of CGST Rules provides that the amount to be deposited by taxpayer in his cash ledger towards taxes, interest, penalty, fees or any other amount, may be deposited using the following modes of payment namely:-

- (i) Internet Banking through authorised banks;

- (ii) Credit card or Debit card through the authorised bank;
- (iii) National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or
- (iv) Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft.

4.2 GST Council in its 42nd meeting held on 5th and 12th October 2020 had approved “Unified Payment Interface (UPI) & Immediate Payment Service (IMPS)” as a payment option for payment of Goods and Services Tax in addition to the four modes of payment as specified under Rule 87(3) of CGST Rules, 2017. Accordingly, development of these two payment modes is under process by GSTN. Principal CCA is also in the process of formalising these payment systems in consultation with NPCI, RBI and the Banks.

4.3 Law Committee has recommended amendment in rule 87(3), rule 87(5), **FORM PMT-06** and **FORM PMT-07** so that appropriate action for implementation of new payment mode may be initiated. The proposed amendments to rule 87 and **FORM PMT-06** and **FORM PMT-07** are shown in red color below:

Rule 87	
87. Electronic Cash Ledger.-	
(1) ...	
(2) ...	
(3) The deposit under sub-rule (2) shall be made through any of the following modes, namely:-	
(i) Internet Banking through authorised banks;	
(ia) Unified Payment Interface (UPI) from any bank;	
(ib) Immediate Payment Services (IMPS) from any bank;	
(ii) Credit card or Debit card through the authorised bank;	
(iii) National Electronic Fund Transfer or Real Time Gross Settlement from any bank	
(iv) Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:	
....	
(4) ...	
(5) Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement or Immediate Payment Service mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:	
Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.	
(6) ...	

Form GST PMT –06

[See Rule 87(2)]

CHALLAN FOR DEPOSIT OF GOODS AND SERVICES TAX

CPIN	<<Auto Generated after submission of information>>	Date <<Current date>>	Challan Expiry Date --
------	--	-----------------------	------------------------

GSTIN	<<Filled in/Auto populated>>	Email address	<<Auto Populated>>
Name (Legal)	<<Auto Populated>>	Mobile No.	<<Auto Populated>>
Address	<<Auto Populated>>		

Details of Deposit (All Amount in Rs.)							
Government	Major Head	Minor Head					
		Tax	Interest	Penalty	Fee	Others	Total
Government of India	Central Tax (----)						
	Integrated Tax (----)						
	CESS (----)						
	Sub-Total						
State (Name)	State Tax (----)						
UT (Name)	UT Tax (----)						
Total Challan Amount							
Total Amount in words							

Mode of Payment (relevant part will become active when the particular mode is selected)

<input type="checkbox"/> e-Payment (This will include all modes of e-payment such as CC/DC, net banking and UPI. Taxpayer will choose one of this)	<input type="checkbox"/> Over the Counter (OTC)		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> IMPS
	Bank (Where cash or instrument is proposed to be deposited)		
	Details of Instrument		
	<input type="checkbox"/> Cash	<input type="checkbox"/> Cheque	<input type="checkbox"/> Demand Draft
<input type="checkbox"/> NEFT/RTGS			

Remitting bank	
Beneficiary name	GST
Beneficiary Account Number (CPIN)	<CPIN>
Name of beneficiary bank	Reserve Bank of India
Beneficiary Bank's Indian Financial System Code (IFSC)	IFSC of RBI
Amount	

Note: Bank Charges, if any, shall be paid separately to the bank by the person making payment.

<input type="checkbox"/> IMPS	
Remitting bank	
Beneficiary name	GST
Beneficiary Account Number (CPIN)	<CPIN>
Name of beneficiary bank	<Selected Authorized Bank>
Beneficiary Bank's Indian Financial System Code (IFSC)	<IFSC of selected Authorized Bank >
Amount	

Note: Bank Charges, if any, shall be paid separately to the bank by the person making payment.

Particulars of depositor	
Name	
Designation/ Status (Manager, partner etc.)	
Signature	
Date	
Paid Challan Information	
GSTIN	
Taxpayer Name	
Name of Bank	
Amount	
Bank Reference No. (BRN)/UTR/ RRN	
CIN	
Payment Date	
Bank Ack. No. (For Cheque / DD deposited at Bank's counter)	

Form GST PMT -07

[Refer Rule 87(8)]

APPLICATION FOR INTIMATING DISCREPANCY RELATING TO PAYMENT

1.	GSTIN					
2.	Name (Legal)					
3.	Trade name, if any					
4.	Date of generation of challan from Common Portal					
5.	Common Portal Identification Number (CPIN)					
6.	Mode of payment (tick one)	Net banking <input type="checkbox"/>	CC/DC <input type="checkbox"/>	NEFT/RTGS <input type="checkbox"/>	IMPS <input type="checkbox"/>	OTC <input type="checkbox"/>
7.	Instrument detail, for OTC payment only	Cheque / Draft No.	Date	Bank/branch on which drawn		
8.	Name of bank through which payment made					
9.	Date on which amount debited / realized					
10.	Bank Reference Number (BRN)/ UTR No., if any					
11.	Retrieval Reference Number (RRN) - IMPS					
12.	Name of payment gateway (for CC/DC)					
13.	Payment detail	Central Tax	State Tax	UT Tax	Integrated Tax	Cess
	<p>Verification (by authorized signatory)</p> <p>I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief.</p> <p align="right">Signature</p> <p>Place Name of Authorized Signatory</p> <p>Date Designation /Status.....</p>					

V. Amendment to rule 89:

5.1.1 Vide para 47 of Circular No. 125/44/2019-GST dated 18th November, 2019, it was clarified that if the export value declared on the shipping bill is different than the value declared in the tax invoice, the lower of the two values would be considered for processing of refund of unutilized input tax credit on account of export of goods made without payment of tax. However, there is still some confusion among the field formations regarding the meaning of the term export value declared in the corresponding shipping bill under the Customs Act – whether the same has to be taken as FOB value or CIF value or invoice value.

5.1.2 The FOB value includes the transaction value of the goods and the value of services performed to deliver goods to the border of the exporting country, while CIF value includes the transaction value of the goods, the value of services performed to deliver goods to the border of the exporting country and the value of the services performed to deliver the goods from the border of the exporting country to the border of the importing country. Further, in terms of the provisions of the Customs Act, 1962, the value of export goods is the transaction value of goods **for delivery at the time and the place of exportation, i.e. port of export (in India)**, thereby meaning that the export value of goods is based on the FOB value. Therefore, it can be stated that the relevant export value declared in the corresponding shipping bill under the Customs Act should be the FOB value. On the other hand, the value of imported goods is the transaction value of goods for delivery at time and place of importation, i.e. port of import (in India), thereby meaning that value of imported goods is based on CIF value.

5.1.3 The clarification issued vide para 47 of Circular No. 125/44/2019-GST dated 18th November, 2019 does not in any manner affect the value which an exporter may charge from the importer. The said clarification has been issued for processing of refund of unutilised ITC under section 54 of CGST Act, read with rule 89 of CGST Rules, on account of export of goods. It is also added that para 47 of Circular No. 125/44/2019-GST dated 18th November, 2019 also makes it clear that the said clarification is applicable when the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, and in such cases, the lower of the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be taken into account while calculating the eligible amount of refund. As the value being referred in Para 47 of the said circular is export value declared in the shipping bill/ bill of export under the Customs Act, the said relevant export value in shipping bill is intended to be the FOB value declared in the shipping bill/ bill of export, as discussed in Para 5.1.2 above.

5.1.4 Law Committee deliberated on the issue and was of the view that the term export value declared in the corresponding shipping bill under the Customs Act mentioned in the clarification issued vide para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019 refers to FOB value only. Law Committee, however, felt that an explanation may be inserted under rule 89(4) of CGST Rules, so as to remove any ambiguity in the matter, and to ensure uniformity in processing of refunds of unutilised ITC on account of export of goods. Law Committee also recommended that Statement 3 of RFD-01 may be modified to include a column for capturing FOB value declared in Shipping Bill/ Bill of export under the heading “Shipping bill/Bill of export”

5.2.1 Second proviso to sub-rule (1) of rule 89 prescribes the person and the supplies which are eligible for refund in respect of supplies made to SEZ Developer/Unit. 2nd proviso to sub-rule (1) of rule 89 is reproduced as under:

“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;”

5.2.2 As per the above proviso, in respect of supplies to SEZ Developer/Unit, the refund is available only to the supplier of goods or services and in respect of only those supply of goods or services which are meant for authorised operations. Further, the said proviso prescribes that receipt of such supply of goods or services by SEZ should have been endorsed by the specified officer of the Zone. However, “specified officer” mentioned in the above proviso has not been defined or clarified in CGST Rules.

5.2.3 In this regard, it is pertinent to mention that rule 30 of the SEZ Rules, 2006 deals with the procedure for procurements from the Domestic Tariff Area. Sub-rule (4) of rule 30 provides for endorsement of the documents/ Bill of Export pertaining to supply from DTA to SEZ by the authorised officer. Sub-rule (4) of rule 30 of SEZ Rules, 2006, is as under:

*“(4) A copy of the document referred to in sub-rule (1) or copy of Bill of Export, as the case may be, with an endorsement by the **authorised officer** that goods have been admitted in full into the Special Economic Zone shall be treated as proof of export and a copy with such endorsement shall also be forwarded by the Unit or Developer to the Goods and Services Tax or Central Excise Officer having jurisdiction over the Domestic Tariff Area supplier within forty-five days failing which the Goods and Services Tax or Central Excise Officer, as the case may be, shall raise demand of tax or duty against the Domestic Tariff Area supplier;”*

5.2.4 In view of the above, it can be stated that there is contradiction in the designation of the officer as prescribed under the CGST Rules, 2017 and that under the SEZ Rules, 2006 who is required to endorse the documents pertaining to receipt of supplies of goods and service in SEZ from DTA. Further, due to this contradiction and lack of clarity, it has been reported that many tax authorities are rejecting the refunds of the suppliers making supplies of goods or services or both to SEZ on the ground that the documents pertaining to supply to SEZ have been endorsed by the Authorised Officer of the SEZ and **not** by the Specified officer of the said SEZ.

5.2.5 Authorised Officer and specified officer have been defined in rule 2 of the SEZ Rules, 2006, as under:

(c) “Authorised Officer” means an Inspector or Preventive Officer or Appraiser or Superintendent of Customs posted in the Special Economic Zone and authorized by the Specified Officer to discharge any of his functions under these rules;

(zd) “Specified Officer” in relation to a Special Economic Zone means Joint or Deputy or Assistant Commissioner of Customs for the time being posted in the Special Economic Zone;

As per the above provisions of SEZ Rules, 2006, a specified officer, being a superior authority in hierarchy, can authorise an authorised officer to discharge any of his functions.

5.2.6 Accordingly, Law Committee deliberated on the issue in its meeting dated 07.05.2022 and recommended that to clarify the matter and to align the provisions of sub-rule (1) of rule 89 of CGST Rules with those pertaining to supplies by DTA to SEZ in SEZ Rules, 2006, **an explanation** may be inserted at the end of sub-rule (1) of rule 89, as under:

Explanation: For the purpose of this sub-rule, “Specified Officer” means a “specified officer” or an “authorised officer” as defined under rule 2 of the Special Economic Zone Rules, 2006.

5.3 The proposed amendment to rule 89 is shown in red color below.

Rule 89
<p>89. Application for refund of tax, interest, penalty, fees or any other amount.-</p> <p>(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 an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:</p> <p>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:</p> <p>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 –</p> <p>(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;</p> <p>(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:</p> <p>...</p> <p>....</p> <p>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.</p> <p>Explanation: For the purpose of this sub-rule, “Specified Officer” means a “specified officer” or an “authorised officer” as defined under rule 2 of the Special Economic Zone Rules, 2006.</p> <p>(1A) ...</p> <p>(2) ...</p> <p>(3) ...</p> <p>(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section</p>

16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

(F) ...

Explanation: For the purpose of this sub-rule, the value of goods exported out of India shall be taken as –

(i) the FOB value declared in the Shipping Bill or Bill of Export form, as the case may be, as per Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply,

whichever is less.

(4A)

VI. Amendment in FORM GSTR-3B

A. In light of notification No. 17/2021-Central Tax (Rate)

6.1.1 It is informed that on the recommendations of GST Council in its 45th meeting, “Restaurant Service” have been notified under section 9(5) of the CGST Act, 2017 w.e.f. 01.01.2022, i.e. to make Electronic Commerce Operators (ECOs) liable to pay GST on ‘restaurant service’ supplied through them [notification no. 17/2021-Central Tax (Rate) dated 18.11.2021 and corresponding notifications under IGST Act and UTGST Act].

6.1.2 Certain representations were received from ECOs wherein the issue of how the details of supplies notified under section 9(5) shall be furnished was raised and it was requested to provide separate lines in GSTR returns for furnishing the same. The issue was deliberated by the Law Committee. Law Committee observed that as the provisions regarding payment of tax by ECOs in respect of delivery of “restaurant service” are coming into force w.e.f. 1st January, 2022, while on the immediate basis, the information in respect of supplies made through ECOs under Section 9(5) of CGST Act may be allowed to be declared both by suppliers as well as ECOs in the existing rows/ tables of GSTR-3B and GSTR-1.

6.1.3 Accordingly, the issue was clarified vide Circular No. 167/23/2021-GST dated 17.12.2021 that the ECOs may report such supplies provided through them under section 9(5) as outward taxable supplies, for the time being, and may also furnish the details of such supplies under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. It was also clarified that the

registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being. Further, GSTN was requested to provide separate rows/ table to provide for separate rows in GSTR-3B for declaration of the supplies through ECOs under section 9(5) by both the suppliers as well as by ECOs.

6.1.4 Now, GSTN has informed that the development of an additional table for reporting taxes paid under section 9(5) of the CGST Act, both by ECOs as well as by the suppliers, has been completed. Therefore, Law Committee in its meeting dated 08.06.2022 proposed to issue a notification in order to notify the changes in **FORM GSTR-3B** to this effect. Law Committee further recommended that corresponding amendments in GSTR-1 may also be expedited. The proposed changes in **FORM GSTR-3B** are shown in red color below.

6.1.5 The proposal to insert the necessary table in GSTR-3B, as recommended by the Law Committee, was placed before the GST Implementation Committee (GIC) for approval on 19.04.2022. While all other members agreed to the said proposal; Haryana, raised a few issues for examination, mainly suggesting that it may not be desirable to introduce a new table in GSTR-3B for a small number of taxpayers; that amendment in GSTR-1 may also be required in addition to GSTR-3B for proper reconciliation; and that instead of making any changes in GSTR-3B, an additional return **FORM GSTR-8A** for ECOs may be introduced to capture such details. Haryana desired that the issue may be reexamined by the Law Committee.

6.1.6 The matter was accordingly, deliberated by the Law Committee in its meeting dated 08.06.2022. The Law Committee recommended to go ahead with the proposed changes in GSTR-3B. Further, Law Committee also recommended that GSTN may expedite development of functionality for changes in GSTR-1, proposed by law Committee to capture the details of supplies made through ECOs for optimal reconciliation.

B. In light of Agenda note # placed before the GST Council relating to clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B

6.2. In terms of the Circular proposed vide the agenda note on clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in **FORM GSTR-3B** placed before the GST Council, certain label changes are required in Table 4 of **FORM GSTR-3B** which are shown in red color below.

[See rule 61(5)]

Year				
Month				

[illegible]

3.1 Details of Outward Supplies and inward supplies liable to reverse charge (other than those covered by Table 3.1.1)

Nature of Supplies	Total Taxable	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(a) Outward taxable supplies (other than zero rated, nil rated and exempted)					
(b) Outward taxable supplies (zero rated)					
(c) Other outward supplies (Nil rated, exempted)					
(d) Inward supplies (liable to reverse charge)					
(e) Non-GST outward supplies					

3.1.1 Details of Supplies notified under section 9(5) of the CGST Act, 2017 and corresponding provisions in IGST/UTGST/SGST Acts.

Nature of Supplies	Total Taxable	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(i) Taxable supplies on which electronic commerce operator pays tax u/s 9(5) [to be furnished by the electronic commerce operator]					
(ii) Taxable supplies made by registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax u/s9(5) [to be furnished by the registered person making supplies through electronic commerce operator]					

3.2 Of the supplies shown in 3.1(a) and 3.1.1(i) above, details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders

	Place of Supply (State/UT)	Total Taxable value	Amount of Integrated Tax
1	2	3	4
Supplies made to			

Unregistered Persons			
Supplies made to Composition Taxable Persons			
Supplies made to UIN holders			

4. Eligible ITC

Details	Integrated Tax	Central	State/UT	Cess
1	2	3	4	5
ITC Available (whether in full or part)				
(7) Import of goods				
(8) Import of services				
(9) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(10) Inward supplies from ISD				
(11) All other ITC				
ITC Reversed				
(1) As per rules 38, 42 & 43 of CGST Rules and section 17(5)				
(2) Others				
(C) Net ITC Available (A) – (B)				
(D) Ineligible ITC Other Details				
(1) As per section 17(5) ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period				
(2) Others Ineligible ITC under section 16(4) & ITC restricted due to PoS rules				

5. Values of exempt, nil-rated and non-GST inward supplies

Nature of supplies	Inter-State supplies	Intra-State supplies
1	2	3
From a supplier under composition scheme, Exempt and Nil rated supply		
Non GST supply		

6.1 Payment of tax

Description	Tax payable	Paid through ITC				Tax paid TDS./TCS	Tax/Cess paid in cash	Interest	Late Fee
		Integrated Tax	Central Tax	State/UT Tax	Cess				
1	2	3	4	5	6	7	8	9	10
Integrated Tax									
Central Tax									
State/UT Tax									

Cess									
------	--	--	--	--	--	--	--	--	--

6.2 TDS/TCS Credit

Details	Integrated Tax	Central Tax	State/UT Tax
1	2	3	4
TDS			
TCS			

Verification (by Authorised signatory)

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from.

Instructions:

- 1) Value of Taxable Supplies = Value of invoices + value of Debit Notes – value of credit notes + value of advances received for which invoices have not been issued in the same month – value of advances adjusted against invoices
- 2) Details of advances as well as adjustment of same against invoices to be adjusted and not shown separately.
- 3) Amendment in any details to be adjusted and not shown separately.
- 4) An ECO shall not include in 3.1(a) above, the supplies on which the ECO is required to pay tax under section 9(5) of the CGST Act, 2017 and shall report such supplies in 3.1.1(i) above.
- 5) A person making supplies through an Electronic Commerce Operator (ECO) shall not include in 3.1(a) above, the supplies on which the ECO is required to pay tax under section 9(5) of the CGST Act, 2017 and shall report such supplies in 3.1.1(ii) above.

6. Accordingly, the agenda note is placed before the GST Council for deliberation and approval. Pari-Materia changes would also be required in the respective SGST Rules.

Agenda Item 3(xiii): Re-credit of amount in electronic credit ledger after recovery of erroneous refund

Rule 86 of the CGST Rules, 2017 provides for electronic credit ledger (ECL). Further, the provisions relating to re-credit of amount in electronic credit ledger are provided under sub-rule (4) & (4A) of rule 86, which are reproduced below:

*“(4) If the refund so filed is rejected, either fully or partly, the amount debited under sub rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03** .*

*(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03** .”*

On perusal of the above, it is observed that the said provisions provide for re-credit of amount in electronic credit ledger only in two situations, which are:

- i. Rejection of refund of unutilised ITC
 - ii. Sanction of refund of excess payment of tax. In such cases of refund, the amount is refunded to the taxpayer in cash as well as credit of Input Tax Credit (ITC) in ECL in same proportion in which the tax liability for the said period has been discharged by the taxpayer thereby meaning that the proportion of excess tax paid by utilising the amount in ECL is eligible to be re-credited to the ECL.
2. Various representations have been received from the field formations and trade/ industry seeking procedure for re-credit of input tax credit (ITC) in the electronic credit ledger, in cases where a registered person deposits the amount of erroneous refund of accumulated ITC or of IGST paid on account of exports, sanctioned to him. However, as detailed above, at present, there is neither any functionality on the portal nor any provision in CGST Rules which allows for re-credit of amount in electronic credit ledger in any other case except for those referred above.
3. In this regard, GSTN has developed a new functionality in **FORM GST PMT-03A** to make re-credit of amount in ECL independent of refund process so as to enable tax authorities to re-credit ITC in ECL, on deposit of amount of erroneous refund by the taxpayer in cash. Accordingly, there is a need to incorporate suitable provisions which allow for re-credit of amount in electronic credit ledger in such cases.
4. The issue has been examined and deliberated by the Law Committee in various meetings. Law Committee observed that in view of the aforesaid provisions, it can be stated that in the following cases if the refund amount, paid in excess, had been rejected *ab-initio*, the said rejected amount would have been re-credited by the proper officer in the ECL of the taxpayer in terms of the provisions of sub-rule (4) of rule 86 read with rule 93 of the CGST Rules, 2017:

- i. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- ii. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ

- developer/Unit without payment of tax.
- iii. Refund of unutilised ITC due to inverted tax structure.

Accordingly, Law Committee found merit in the proposal that in cases mentioned above, if the erroneous refund amount is deposited by the taxpayer, the amount so deposited can be re-credited in the ECL of the taxpayer.

5. As per sub-rule (10) of rule 96, IGST refund route is not available in certain situations mentioned therein. There are, however, cases where taxpayers paid integrated tax (IGST) on export of goods, due to ignorance or lack of clarity about the said provisions, and claimed refund of such IGST in contravention of the provisions of sub-rule (10) of rule 96. In such cases, where the refund of IGST was not admissible on export of goods in terms of conditions specified in sub-rule (10) of rule 96, the taxpayer could have claimed refund of accumulated ITC under the provisions of sub-section (3) of section 54 by exporting the goods without payment of tax. Therefore, in such cases, as IGST was not required to be paid by the taxpayer on export of goods in the first place itself, rejection of such refunds of IGST due to provisions of sub-rule (10) of rule 96, would have resulted in taxpayer filing for refund of excess payment of tax. Sanction of refund of such excess payment of tax would have resulted in payment of some amount to the taxpayer in cash and some amount by credit in ECL in the same proportion in which the tax liability for such tax period has been discharged using cash and ITC. Therefore, the Law Committee took a view that in such cases of contravention of sub-rule (10) of rule 96, where the erroneous refund of IGST has been deposited by the taxpayer in cash, direct re-credit of amount in ECL of the taxpayer may be allowed, in order to facilitate taxpayers and to ease the compliance process, instead of going through the procedure of filing of a separate refund claim for excess payment of tax.

6. Law Committee accordingly **proposed that in respect of categories of refund, mentioned in para 4 & 5 above, where the erroneous refund amount is deposited by the taxpayer in cash, along with the applicable interest, on his own motion or on being pointed out by tax officer, the amount so deposited can be re-credited to the ECL of the taxpayer.** Further, Law Committee also recommended that in such cases of re-credit through **FORM GST PMT-03A**, the recredit will be allowed **ONLY** in the electronic credit ledger and **NOT** in electronic cash ledger.

8.1 In view of the above, to provide for re-credit of amount in ECL where the amount of erroneous refund has been paid by the taxpayer, in cases of refund of unutilised ITC or in cases of refund of IGST in contravention of sub-rule (10) of rule 96 of the CGST Rules, 2017, **the Law Committee proposed the following amendment** in the CGST Rules:

I. Insertion of the following sub-rule (4B), after sub-rule (4A) in rule 86:

(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him –
a. under sub-section (3) of section 54 of the Act, or
b. under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,
*along with interest and penalty, wherever applicable, through **FORM GST DRC-03**, in cash,*
on his own or on being pointed out, an amount equivalent to the amount of erroneous refund
deposited by the registered person shall be re-credited to the electronic credit ledger by the
*proper officer by an order made in **FORM GST PMT-03A**.*

II. **Notification of FORM GST PMT-03A.**

FORM GST PMT –03A**[See Rule 86(4B)]****Order for re-credit of the amount to electric credit ledger**

Reference No: _____

Date: _____

1. GSTIN – _____

2. Name (Legal) – _____

3. Trade name, if any _____

4. Address – _____

5. Ledger from which debit entry was made- _____ Cash / credit ledger

6. Debit entry no. and date – _____

7. Payment Reference Number (DRC 03): _____ dated _____

8. Details of Payment:-

Cause of Payment	(Deposit of erroneous refund of unutilised ITC or Deposit of erroneous refund of IGST)
Details of Refund Sanction order	1. Shipping Bill/ Bill of Export No. & Date _____ 2. Amount of IGST paid on export of goods _____ 3. Details of Exemption/Concessional Rate Notification used for procuring inputs _____ 4. Amount of refund sanctioned _____ 5. Date of credit of refund in Bank Account _____ (or) 1. Category of refund & relevant period of refund _____ 2. GST RFD-01/01A ARN & Date - _____ 3. GST RFD-06 Order No. & Date _____ 4. Amount of refund claimed _____ 5. Amount of refund sanctioned _____

10. No. and date of order giving rise to recredit - _____

11. Amount of credit -

S.No .	Act (Central Tax/ State tax/ UT Tax/ Integrated Tax/ CESS)	Amount of credit (Rs.)					
		Tax	Interest	Penalty	Fee	Other	Total
1	2	3	4	5	6	7	8

Signature
Name
Designation of the officer

Note: 'Central Tax' stands for Central Goods and Services Tax; 'State Tax' stands for State Goods and Services Tax; 'UT Tax' stands for Union territory Goods and Services Tax; 'Integrated Tax' stands for Integrated Goods and Services Tax and 'Cess' stands for Goods and Services Tax (Compensation to States)

9.2 Law Committee in its meeting held on 07.05.2022 also recommended to issue a circular for clarifying various issues relating to manner of re-credit in electronic credit ledger using **FORM GST PMT-03A**. The circular as recommended by Law Committee is enclosed as Annexure.

10. The agenda along with the draft circular, as recommended by the Law Committee, is placed before the GST Council for deliberation and approval please.

Circular No. XXX/XX/2022-GST

F. No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the , 2022

To,

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

Madam/Sir,

**Subject: Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A
– regarding**

Difficulties were being faced by the taxpayers in taking re-credit of the amount in the electronic credit ledger in cases where any excess or erroneous refund sanctioned to them had been paid back by them either on their own or on being pointed by the tax officer. In order to resolve this issue, GSTN has recently developed a new functionality of **FORM GST PMT-03A** which allows proper officer to re-credit the amount in the electronic credit ledger of the taxpayer. Further, sub-rule (4B) in rule 86 of the CGST Rules has been inserted vide Notification No. XX/2022-CT dated XX.XX.2022 to provide for re-credit in the electronic credit ledger where the taxpayer deposits the erroneous refund sanctioned to him.

2. In order to ensure uniformity in the implementation of the above 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 following:

3. Categories of refunds where re-credit can be done using FORM GST PMT-03 A:

3.1 Reference is invited to sub-rule (4B) of rule 86 of the CGST Rules, which is reproduced as under:

(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him –
a. under sub-section (3) of section 54 of the Act, or
b. under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,
*along with interest and penalty, wherever applicable, through **FORM GST DRC-03**, in cash,*
on his own or on being pointed out, an amount equivalent to the amount of erroneous refund
deposited by the registered person shall be re-credited to the electronic credit ledger by the
*proper officer by an order made in **FORM GST PMT-03A**.*

3.2 From the above, it can be stated that in respect of the following categories of refund sanctioned erroneously, re-credit of amount in the electronic credit ledger can be done through **FORM GST PMT-03A**, on deposit of such erroneous refund along with interest and penalty, wherever applicable, by the taxpayer:

- a. Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
- b. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
- d. Refund of unutilised ITC due to inverted tax structure.

4. Procedure for re-credit of amount in electronic credit ledger:

4.1 The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through **FORM GST DRC-03** by debit of amount from electronic cash ledger. While making the payment through **FORM GST DRC-03**, the taxpayer shall clearly mention the reason for making payment in the text box as the deposit of erroneous refund of unutilised ITC, or the deposit of erroneous refund of IGST obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules, 2017.

4.2 Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in format enclosed as **Annexure-A**, to jurisdictional proper officer to re-credit the amount equivalent to the amount of refund thus paid back through **FORM GST DRC-03**, to electronic credit ledger.

4.3 The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, 2017, and penalty, wherever applicable, has been paid by the said registered person in **FORM GST DRC-03** by way of debit in electronic cash ledger, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in **FORM GST PMT-03A, preferably within a period of 30 days** from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

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

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

(Sanjay Mangal)
Principal Commissioner (GST)

From,

GSTIN - _____

Legal Name- _____

Trade Name- _____

To,

Jurisdictional Proper officer,

Address _____

Subject: Request for re-credit of amount in Electronic Credit Ledger

I/We have been granted refund under the following category (please tick the relevant category):

- a. Refund of IGST, obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules, 2017.
- b. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
- d. Refund of unutilised ITC due to inverted tax structure.

2. The details of refund sanction order are as under:

(a) In case of refund of IGST, obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules, 2017:

6. Shipping Bill/ Bill of Export No. & Date _____
7. Amount of IGST paid on export of goods _____
8. Details of Exemption/Concessional Rate Notification used for procuring inputs _____
9. Amount of refund sanctioned _____
10. Date of credit of refund in Bank Account _____

(b) In other cases of refund:

6. Category of refund & relevant period of refund _____
7. GST RFD-01/01A ARN & Date _____
8. GST RFD-06 Order No. & Date _____
9. Amount of refund claimed _____
10. Amount of refund sanctioned _____
11. Date of credit of refund in Bank Account _____

3. I/We have deposited the erroneous refund amount of Rs. _____ along with interest of Rs. _____ and penalty of Rs. _____ (wherever applicable) vide FORM GST DRC -03 Ref/ARN _____ dated _____ voluntarily on my own ascertainment/ against a notice/order/letter No. _____ dated _____ issued by (details of the tax authority). It is now requested to re-credit an amount equivalent to the amount of erroneous refund, so deposited, in the Electronic Credit Ledger.

4. I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Date:

Signature of Authorized Signatory
Name
Designation / Status

Agenda Item 4 : Issues recommended by the GSTN

Agenda Item 4 (i) : Development of New Return System

GST Council in its 31st meeting held on 22nd December 2018, decided that a New Return System under GST would be introduced for taxpayers. Under this New Return System, it was envisaged that small taxpayers (with a turnover up to 5 crores) could opt to file the return quarterly. It was proposed that the main return GST RET-1 (parallel of GSTR-3B), would contain details of all supplies made, Input Tax Credit availed, and the payment of taxes, along with interest, if any. And would include two annexure forms, GST ANX-1 and GST ANX-2. GST ANX-1 [Annexure of Outward Supplies, (parallel of GSTR-1)] for reporting details of all Outward Supplies, Inward Supplies liable to Reverse Charge, and Import of Goods and Services that would need to be reported invoice-wise (except for B2C supplies).

2. GST ANX-2 [Annexure of Inward Supplies, (parallel to GSTR-2 of the original design)] would report details of all Inward Supplies. Most of these details would be auto-drafted from the details uploaded by the suppliers in their GST ANX-1. The recipient of supplies would be able to take action on these auto-drafted documents, which would be available to them on a real-time basis.

3. Thereafter, in the 39th meeting of the GST Council, held on 14th March 2020, it was decided to avoid major/ big-bang changes in the GST system and the transition to the New Return System should be made incrementally. The new Return design was put in abeyance parallelly. Thus, it was decided that the salient features of the New GST Return system would be incorporated into the existing return filing system. It would start with linking the present system like GSTR-1 and GSTR-2A with GSTR-3B. Further, other significant changes like introducing new statement of Input Tax Credit (GSTR-2B), its linking to GSTR 3B, and Nil filing by SMS would be added gradually.

4. Therefore, GSTN started the **Returns Enhancement and Advancement Project (REAP)** on 1st April 2020, wherein a dedicated team was set up to expeditiously deliver functional changes to GST System on a Time & Material (T&M) basis. The comparison of main features between the present return system upgraded under REAP and the proposed new return system is stated as under:

Sl No.	Feature	New Return System	Present Return after REAP
1.	Auto Population of liability to Return	Y	Y
2.	Generation of Statement having auto population of credit	Y	Y
3.	Auto population of ITC to Return	Y	Y
4.	Quarterly filing of Return for small taxpayer	Y	Y
5.	Auto population of import data to ITC	Y	Y

6.	Option to Keep ITC pending or reject invoice by recipient	Y	Under Consideration
7.	Deemed filing of GSTR-1/ GST ANX-1	Y	N
8.	Separate Amendment Return	Y	Under Consideration
9.	No change allowed in auto populated values	Y	Y
10.	Auto population of e-invoice data in GSTR-1	N	Y
11.	Nil filing of GSTR-1 & GSTR-3B by SMS.	N	Y

5. A brief description of enhancements made in GSTR-1 and GSTR-3B as above and new features added are as follows:

- a. **GSTR-2B:** It is an auto-drafted ITC statement which is generated for every normal taxpayer on the basis of the information furnished by his suppliers in their respective GSTR-1/IFF, GSTR-5 (non-resident taxable person) and GSTR-6 (input service distributor). The statement indicates availability and non-availability of input tax credit to the taxpayer against each document filed by his suppliers.
- b. **Auto-population of GSTR-3B:** GST Portal now provides the taxpayers with auto-populated GSTR-3B. The liability figures to be reported are computed from the GSTR-1 and IFF filed by the taxpayers. Credit is auto-populated from system-generated GSTR-2B. Thus, now there is an interlinking between GSRT-1, GSTR-2B and GSTR-3B.
- c. **HSN Search Functionality:** To help taxpayers search for accurate HSN's, GSTN has provided a search HSN functionality on GST Portal. The taxpayer can search the respective HSN code according to their outward supplies either by number or by mentioning the product they are supplying.
- d. **Enhancements in GSTR-2A:** New features have been included in GSTR-2A like GSTR-1 & GSTR-3B filing status for a record and whether the invoice will reflect in Table-8A of GSTR-9.
- e. **Interest Calculator Functionality in GSTR-3B:** Now Interest calculation has been automated on delayed filing of GSTR-3B.
- f. **Code Enhancement in GSTR-1:** Major software & hardware enhancement have been done recently in two phases in GSTR-1, which has resulted in faster & smooth filing of GSTR-1 and enhanced system capacity.
- g. **Quarterly GSTR-1 and GSTR-3B:** Taxpayers having aggregate turnover up to Rs. 5 crore now have the option of filing GSTR-3B on quarterly basis.
- h. **Auto population of e-invoice data in GSTR-1:** e-invoice data is auto populated into GSTR-1 of the seller.

6. The proposed Section 43A in CGST Act, which was the basis of new return design, has since been deleted from the Act with the approval of the GST Council. The corresponding changes for the present return (enhanced by REAP) has also been approved by the GST Council.

7. **Proposal: Given the enhancement and improvements made in the present return system, the associated challenges in law, and the fact that now most of the key feature of the New Return System have already been implemented in the existing return system; it is proposed that GST Council may take a call on the final withdrawal of the 'New Return System.**

Agenda Item 4 (ii) : Extension of REAP and LEAP Projects beyond 31.03.22 for FY 2022-23

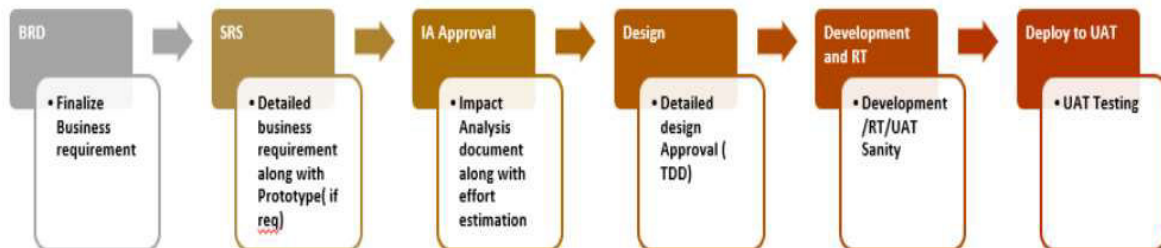
The proposal of Software development under actual identified resources utilization, commonly known as Time and Material (T&M) basis, to implement the changes identified under Roadmap for incremental improvements to existing Returns (Linking of GSTR-1/GSTR-2A/2B with GSTR-3B) was placed before the GST Council in its 39th meeting held on 14th March 2020. Consequently, Council approved the proposal of incremental enhancement of existing Returns on a T&M basis and since then GSTN started T&M model for more expeditious execution of the CRs.

Currently GSTN use both models for implementation of Change Request:

- All critical time sensitive changes are taken up under T&M model where implementation is needed in time bound manner and has immensely colossal impact on GST System/Taxpayers/Revenue etc.
- All other changes are taken up under Non T&M model or CR based model (also known as waterfall model)

The main difference in T&M model and normal CR model is that in T&M model payment is calculated in terms of man-days of resources identified which are deployed exclusively for the project. In CR based model (waterfall model) payment is made for individual CR and effort is estimated for each step in the development and payment is made for effort in the development. Sizable voluminous time gets spent on estimation of efforts and then designing with to and fro movement between GSTN and Infosys till acquiescent is arrived at the effort estimation.

Change Management (Non -T&M Model) involves six stages along with intermediate negotiations on effort and estimate.



On the other hand, Change Management in T&M Model includes TFD creation straight from BRD involving 4 stages and needs close monitoring of project implementation



- To analyze implication of T&M model, some changes of similar magnitude were compared under two models and it appears that in T&M model the delivery time for project is much

shorter and generally in 3+ months important changes can be implemented which used to take 9+ months earlier under CR model.

- The scale of payment is similar for the vendor whereas changes are completed in lesser time.
- The experiences of last 2 years suggest that Time & Material Model is a better method to achieve the objectives. GSTN has also become now experienced in running this model.

Approval obtained in the 42nd and 43rd meeting of GST Council:

- After taking note of improved efficiency of service delivery under T&M project, GST Council approved that all Critical IT changes shall be carried out using T&M model and **was extended up to 31st March 2022 in 42nd Meeting of GST Council with maximum number of resources to be deployed at any given point of time will not exceed 200** and all payments would be made based on actual deployment of manpower.

However:

- The changes being requested to GSTN are continuous and also all the States are moving to the Back Office of Model 2 States developed and managed by GSTN.
- The constant inflow of change requirements with expectation of expeditious turnaround time from Law Committee, are mostly to reduce leakages of revenue as well as improving taxpayer services.
- There remain constant consequential change requirements under BIFA (Analytical Platform).

Proposal:

GST Council may accordingly like to approve:

- **The extension of the current T&M model from 1st April 2022 till 30th March 2023 (Max resources not exceeding 200)**
- **Conversion of existing Change Management (Non -T&M Model) model into T&M model with max. number of resources, not exceeding 100 at any given point of time till 30th March 2023**
- **These decisions are essentially related to the project implementation and therefore, in future they may be taken by the GSTN Board and GST Council may be kept informed where the decision would impact the budget of GSTN substantially.**

Agenda Item 4 (iii) : Status of Establishing Multiple Invoice Registration Portals (IRPs) to cater to the requirement of extending e-Invoicing to all the Businesses

1. The e-Invoicing System called IRP (Invoice Registration Portal) is at present being run by NIC. In its 43rd GST Council of 28th May 2021 the proposal to establish multiple IRPs was approved, whereby GSTN was directed to empanel 3 to 5 e-Invoice Registration Partners. Accordingly, GSTN initiated the process for IRP empanelment, through advertisements placed in leading national dailies. A total of 71 applications from across the country were received. Due diligence was carried out in relation to these companies in multiple rounds of technical and financial feasibility.

2. The top 4 companies out of above were finally called for empanelment as IRPs, which are as follows:

Ser #	IRP Name	Rank
1	M/s Cygnet Infotech Private Ltd.	1
2	M/s IRIS Business Services Ltd.	2
3	Defmacro Software Private Ltd (commonly known as ClearTax).	3
4	M/s Ernst & Young LLP.	4

3. NIC has also now also approached GSTN for go ahead to establish a second IRP. Thus, with the 4 empanelled private IRPs and 2 IRPs of NIC (if approved), a total of 6 IRPs are expected to be established in next few months, which shall provide an adequate IT infra and eco-system to insure uninterrupted invoice registration services to the businesses. The taxpayers shall have option to choose between the services of IRPs and system shall have opportunity to balance the load in case anyone IRP portal faces any challenge such as long queue.

4. **The following proposal is now placed before the Council for:**

- a. **The Council may take note of empanelment of the 4 IRPs as detailed above.**
- b. **The Council may approve the establishment of the 2nd IRP of NIC.**

Agenda Item 5: Performance Report of the NAA (National Anti-profiteering Authority) for the 2nd quarter (July to September 2021), 3rd quarter (October to December 2021) and 4th quarter (January to March, 2022) of the F.Y 2021-22 for the information of the Council

The performance report of Anti-profiteering for the 2nd quarter (July to September 2021, 3rd quarter (October to December, 2021) and 4th quarter (January to March, 2022) of Financial Year 2021-22 at various levels, is as under:

1.1. Performance of National Anti-Profiteering Authority:

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance
		Total Disposal during quarter	No. of cases Where Profiteering established	No. of cases Where Profiteering established not	No. of cases referred back to DGAP	
Quarter 1 st July, 2021 to 30 th September, 2021						
139	28	0	0	0	0	167
Quarter 1 st October, 2021 to 31 st December, 2021						
167	15	0	0	0	0	182
Quarter 1 st January, 2022 to 31 st March, 2022						
182	26	0	0	0	0	208

1.2 Performance of DG(Anti-profiteering):

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 1 st July, 2021 to 30 th September, 2021					
80	8	30	29	1	58
Quarter 1 st October, 2021 to 31 st December, 2021					
58	5	29	26	3	34
Quarter 1 st January, 2022 to 31 st March, 2022					
34	2	7	6	1	29*

*Out of these 29 cases, 19 cases have been stayed by various Hon'ble High Courts

- One case has been held up per direction by NAA.
- Actual pendency of cases in which Investigation is under process are 9 only. It includes 2 new cases received in March 2022.

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

Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases)
Quarter 1st July, 2021 to 30th September, 2021			
38	62	54	46
Quarter 1st October, 2021 to 31st December, 2021			
30*	57	58	29
Quarter 1st January, 2022 to 31st March, 2022			
29	49	48	30

* The closing balance of the quarter July to September, 2021 is different from the opening balance of the subsequent quarter October to December, 2021 as there were 16 reminders to the earlier complaints.

1.4 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 1 st July, 2021 to 30 th September, 2021				
65*	69	24	74	36
Quarter 1 st October, 2021 to 31 st December, 2021				
36	80	18	5	93
Quarter 1 st January, 2022 to 31 st March, 2022				
87**	55	5	89	48

*Report from Haryana SLSC was not received so the Closing Balance for the quarter ending June, 2021 (68) differs from the Opening Balance for the quarter ending September, 2021 (65) by 3.

****As report from Andhra Pradesh has not been received so Closing Balance of Quarter ending December 2021 and Opening Balance of Quarter ending March 2022 in r/o Andhra Pradesh may differ by 3.**

3 cases reported as Receipt in the month of December 2021 are old cases already sent to Standing Committee by the State Level Screening Committee which have now been referred back by Standing Committee for Relied Upon Documents / Reasoning /Fresh recommendation and hence may not be treated as new case Receipt.

So, the total Closing Balance and Opening Balance may differ by 6.

2. During these quarters NAA has undertaken the following activities/initiatives-

- i. The functioning of the Authority remained affected during the quarter due to the lack of prescribed quorum of the Authority required under Rule 134(1) of The CGST Rules, 2017, no quasi-judicial functions and proceedings could be held and therefore, no cases and complaints could be disposed till December 31,2021. As on 31st December 2021, the number of cases pending for quasi-judicial proceedings at the level of the authority was 182.
- ii. Vide Notification No. 37/2021 dated 01.12.2021 issued by the Department of Revenue, the term of the Authority was extended up to 30.11.2022.
- iii. The quorum of the National Anti-Profitteering Authority was restored since 29.04.2021 with joining of two newly appointed Members in February 2022. Consequently, quasi-judicial proceedings commenced. The total number of cases pending before the Authority as on 31.03.2022 was 208. The total number of hearings fixed till 31.03.2022 are 106, whereas the total number of fresh notices issued to the parties calling for their initial submission till 31.03.2022 was 62.
- iv. The Authority reviewed the performance of the DGAP and the Anti-profitteering Machinery for the quarter on 09.03.2022 and found that the DGAP had 34 cases where investigation was in progress while the Standing Committee and the State Level Screening Committees had 29 cases and 94 cases pending disposal respectively as on 09.03.2022. The Authority took cognizance of Order issued by Hon'ble Supreme Court of India dated 10.01.2022 in the case of Suo Moto Writ Petition No. 3 of 2020, wherein it was decided to extend the limitation for all proceedings under all laws and rules till 28.02.2022 on account of Covid 19 pandemic. After studying this Order of the Hon'ble Supreme Court, the Authority has noted that the limitation for all cases (which would have expired during the period from 15.03.2020 to 28.02.2022) will have an extended limitation period accordingly.
- v. At present 136 Writ Petitions have been filed by various parties before the High Court of Delhi, Telangana, Bombay, Madras, Allahabad, Karnataka, Gujarat, Uttarakhand, and Kolkata in which the Union of India, the GST Council, the NAA and the DGAP have been made respondents. They have challenged the constitutional validity of Section 171 of the CGST Act, 2017 as well as the Rules. Out of the above Writ Petitions, 78 have been fixed for final disposal before the Delhi High Court. The NAA has also engaged the Solicitor General to defend these Writ Petitions. Some cases may be remanded to the NAA by the Hon'ble High Courts across the country and appeals may also be filed in the Hon'ble

Supreme Court of India against the orders of the High Courts. The NAA has also constituted a panel of advocates in this regard.

Accordingly, the quarterly performance report of the National Anti-profiteering Authority for the period from July 2021 to March 2022 is placed before the GST Council.



Agenda for

47th GST Council Meeting

28-29 June 2022

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Discussion on Agenda Items

Agenda Item 3 (Part-II) XIV: Note for extension of limitation under section 168A of the CGST Act, 2017

1. Section 73 of the CGST Act, 2017 provides that the proper officer shall issue the order demanding any tax that has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

2.1 Some of the members of the Law Committee highlighted the problem being faced by the taxpayers as well as tax administration in respect of demands and refunds getting time barred due to long period of lockdown/restrictions on account of Covid-19 pandemic. A request was made to consider extension of timelines in respect of proceedings under:

- i. Section 73 and 74
- ii. Section 54 and 55

2.2 The issue was deliberated by the Law Committee in its meeting held on 11.04.2022 and 07.05.2022. The Law Committee observed that centre as well as state governments were working with reduced staff, along with staggered timings and exemption to certain categories of employees from attending offices, from time to time during COVID period. Further, it was a conscious policy decision not to do enforcement actions in the initial period of implementation of GST law, thereby no action for scrutiny, audit etc. could be undertaken during initial period of GST implementation. Since the due date of filing Annual return for FY 2017-18 was 5th/7th February, 2020, based on which limitations for demand under the Act are linked, and since the onset of COVID happened immediately after that, thereby, audit and scrutiny for FY 2017-18 were impeded due to various restrictions during COVID period.

2.3 The Law Committee, accordingly, recommended that **limitation under section 73 for FY 2017-18 for issuance of order in respect of demand linked with due date of annual return, may be extended till 30th September, 2023 under the powers available under section 168A of CGST Act.** Law Committee further took a view that no such extension is required for timelines under section 74 of the Act, as the Act provides for sufficient limitation time of 5 years in respect of such cases, i.e. much beyond the period affected by COVID-19.

2.4 Law Committee also observed that taxpayers may also have faced difficulties in timely filing of the refund claims during the COVID period. Besides, the tax officers were also hampered in issuing SCN during COVID period, in respect of erroneous refunds sanctioned. Therefore, the Law Committee also recommended that **time period from 01.03.2020 to 28.02.2022 may be excluded** from the limitation period for filing refund claim by an applicant under section 54 and 55 of CGST Act, as well as for issuance of order / demand in respect of erroneous refunds under section 73, by exercising power under section 168A of CGST Act.

3. A draft notification under section 168A of CGST Act, as per the above recommendations of the Law Committee, is placed at **Annexure A**.

4. In view of the above, the agenda, along with the draft notification, is placed before the GST Council for deliberation and approval.

Annexure-A

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

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

Notification No. XXXX– Central Tax

New Delhi, the XXXXXX

G.S.R (E).— In partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, in exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby notifies, as under,-

(i) the time limit specified under sub-section (10) of section 73, for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, shall be extended up to the 30th day of September, 2023;

(ii) for computation of period of limitation under sub-section (10) of section 73 of the said Act, for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of erroneous refund, the period from the 1st day of March, 2020 to the 28th day of February, 2022, shall stand excluded;

(iii) for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act, the period from the 1st day of March, 2020 to the 28th day of February, 2022, shall stand excluded.

2. This notification shall come into force with effect from the XXXXXXXXXXXXXXXX.

[F. No. CBIC-20001/2/2022-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

Agenda Item 3 (Part-II) XV: Waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 and extension of due date for filing FORM GST CMP-08 for Q1 of FY 2022-23.

1. Sub-rule (1) to rule 62 of the CGST Rules, 2017 requires every registered person paying tax under section 10 to furnish a return for every financial year in **FORM GSTR-4**, till the 30th day of April following the end of such financial year, besides furnishing a statement, every quarter containing the details of payment of self-assessed tax in **FORM GST CMP-08**, till the 18th day of the month succeeding such quarter. Accordingly, the due date to furnish **FORM GSTR-4** for FY 2021-22 was 30th April, 2022.

2.1. In this regard, attention is drawn to the advisory dated 30.04.2022 issued by GSTN to composition taxpayers in respect of the issues arising out of negative liability in **FORM GSTR-4**. The self-assessed tax paid by the taxpayer and declared in quarterly statements in **FORM GST CMP-08** for the financial year is auto-populated on the portal in **table 5** of **FORM GSTR-4** for the said financial year. The liability of the complete year is required to be declared by the taxpayers in **FORM GSTR-4** under applicable tax rates by filling up **table 6** mandatorily. In case, there is no liability, the said table may be filled up with '0' value. If no liability is declared in table 6, it was presumed (on portal) that no liability is required to be paid, even though taxpayer may have paid the liability through **FORM GST CMP-08**. In such cases, liability paid through **FORM GST CMP-08** was treated as excess tax paid and was moved on the portal to Negative Liability Statement for utilization of same for subsequent tax period's liability.

2.2. A large number of tickets were received on the GSTN Helpdesk for reducing the negative liability from the Negative Liability Statement. It was also noticed that some taxpayers had utilized the amount available in negative liability statement for paying the liability while filing further statements in **FORM GST CMP-08** or return in **FORM GSTR-4** of subsequent financial year. The said issue was deliberated in the Law Committee meeting held on 08.10.2021. Law Committee took a view that amount in negative liability statement needs to be debited on the portal as a remedial action. It was also decided wherever the amount available in negative liability statement had been utilized by the taxpayer for paying the liability while filing statement in **FORM GST CMP-08** or return in **FORM GSTR-4** of subsequent financial year, such amount needs to be debited from electronic cash ledger of the concerned taxpayer.

3. Accordingly, the amount available in negative liability statement had been debited on the portal for all taxpayers. In cases where the taxpayers had utilized the amount available in negative liability statement, the amount utilized out of negative liability statement was debited from the electronic cash ledger on the portal. Though, such amount of negative liability utilized should have been paid by the taxpayer by depositing the amount through challan, but in some cases, the amount has not been deposited by the taxpayers. The taxpayers, who have deposited the amount in cash ledger, the debited amount have been adjusted, whereas in case the amount of negative liability utilized has not been deposited by the taxpayer through challan, the balance in cash ledger became negative. In such cases, the taxpayers were advised by GSTN through the abovementioned advisory to deposit the past liability through challan of equal amount urgently. In case, the liability had already been paid through challan or by adding in the liability of the subsequent period, the same was advised to be claimed as refund by filing through application in **FORM GST RFD-01**.

4. In this context, a large number of representations have been received from the taxpayers stating that due to the debit made by the system in electronic cash ledger, resulting in negative balance in the said ledger, they are suddenly facing cash crunch for paying the remaining due amount as per GSTR-4 return. Since, the said action has been initiated on the system towards the end of the month of April, shortly before the due date of filing GSTR-4 return for FY 2021-22, viz. 30.04.2022, taxpayers have complained of paucity of time to arrange for requisite funds. Therefore, a large number of taxpayers have reported difficulty in furnishing **FORM GSTR-4** by the due date.

5. The issue was deliberated by the law committee in its meeting held on 07.05.2022. Law Committee had recommended that late fee may be waived for delay in filing GSTR-4 for FY 2021-22 for two months from the due date, i.e. late fee under section 47 may be waived **for the period 01.05.2022 till 30.06.2022** for delay in filing **FORM GSTR-4** for FY 2021-22. The said recommendation of the Law Committee was subsequently approved by the GST Implementation Committee (GIC) and implemented vide issuance of Notification No. 07/2022-GST dated 26th May, 2022.

6. However, considering a large number of representations from the taxpayers and various trade associations regarding difficulty being caused due to negative balance in electronic cash ledger, the status of issue was placed by GSTN before the Law Committee, in the meeting held on 08.06.2022. It was informed by GSTN that, as on date, approximately 85,000 taxpayers still have negative entries in their electronic cash ledger amounting to approximately Rs 168 crores. To address the problem being faced by the taxpayers, and as trade facilitation measure, the Law Committee recommended that:

“1. The negative balance in cash ledger in respect of those taxpayers having negative balance in electronic cash ledger as on date may be nullified by passing a credit entry of equal amount by running a utility in the System.

2. The list of all such cases may be sent to tax authorities for necessary verification and recovery, if any, in cases wherein taxpayer has neither paid the amount utilised out of negative liability statement through CMP-08/GSTR-4 nor through DRC-03.

3. An e-mail may also be sent by GSTN to these taxpayers (approximately 85,000) to pay the tax, if any, in case they have utilised the negative entry in the cash ledger.

4. Where the taxpayer has paid the liability twice, he may seek refund from the jurisdictional officer under the category excess tax paid.”

7. In order to implement the above recommendations of the Law Committee, GSTN has sought time **upto 8th July 2022 for deployment of the said functionality**, i.e. beyond June 2022 (the waiver of late fee for filing of GSTR-4 for FY 2021-22 is upto 30th June 2022).

8. In view of the above, it is proposed to:

(i) extend the waiver of late fee for delay in filing **FORMGSTR-4** for FY 2021-22 by approximately four more weeks, i.e. late fee under section 47 may be waived till 28.07.2022 for delay in filing **FORM GSTR-4** for FY 2021-22 (The existing waiver is for the period from 01.05.2022 till 30.06.2022)

(ii) extend the due date of filing of **FORM GST CMP-08** for the 1st quarter of FY 2022-23 from 18.07.2022 to 31.07.2022.

9. Accordingly, the proposal in Para 7, as recommended by the Law Committee, along with draft notifications (**Annexure A and B**) is placed before the GST Council for approval.

Annexure A

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

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

Notification No. --/2022 – Central Tax

New Delhi, the, 2022

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 73/2017–Central Tax, dated the 29th December, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 1600(E), dated the 29th December, 2017, namely :—

In the said notification, in the sixth proviso, for the words, figures and letters “30th day of June, 2022”, the words, figures and letters “28th day of July, 2022” shall be substituted.

[F. No. CBIC-20001/2/2022-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: The principal notification No. 73/2017-Central Tax, dated 29th December, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 1600(E), dated the 29th December, 2017 and was last amended *vide* notification number 07/2022 – Central Tax, dated the 26th May, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R 397 (E), dated the 26th May, 2022.

[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. --/2022 – Central Tax

New Delhi, the, 2022

G.S.R.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019-Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019, namely:—

In the said notification, in the second paragraph, after the fourth proviso, the following proviso shall be inserted, namely: –

“Provided also that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in **FORM GST CMP-08** of the Central Goods and Services Tax Rules, 2017, for the quarter ending 30th June, 2022 till the 31st day of July, 2022.”;

[F. No. CBIC-20001/2/2022-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: The principal notification No. 21/2019-Central Tax, dated 23rd April, 2019 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019 and was last amended vide notification number 25/2021 – Central Tax, dated the 1st June, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 397 (E), dated the 1st June, 2021.

Agenda Item 3 (Part-II) XVI: Refund of accumulated ITC to Duty-Free Shops

1. Back ground of the issue

1.1 Duty-Free Shops (DFS) are a point of sale of goods such as perfumes, alcoholic liquor, cosmetics, etc. to international passengers at the arrival and departure terminal of major international airports. These goods are generally imported from outside India and are stored in 'special bonded warehouses' licensed under section 58A of the Customs Act before being sold to the international passengers from Duty-Free Shops (points of sale) located in the Customs area at arrival and departure side of the International Airports. The DFS operators also procure some goods indigenously on payment of due GST for sale from duty-free shops (point of sale) in arrival and departure terminals of international airports. Besides, DFS operators also receive GST-paid supplies of input services such as renting of premises in terms of the concession agreement with the airport operator or the Airports Authority of India, advertisement services, CHA services, etc on which they avail ITC.

1.2 DFS operators were considering such sale of goods to international passengers from DFS (point of sale) as zero-rated supply and were filing refund claim of accumulated ITC on account of 'zero-rated supply' under section 54(3) of CGST Act. In a few cases, the refund was not being sanctioned by the tax officers on the ground that supply by the Duty-Free Shop to the eligible passengers doesn't qualify as exports.

1.3 The issue was earlier deliberated in the Law Committee and the GIC/GST Council. As per the recommendations of GIC/ GST Council, Notification No. 11/2019-Integrated Tax (Rate) dated 29.06.2019 was issued, exempting any supply of goods by a retail outlet established in the departure area of an international airport, beyond the immigration counters, to an **outgoing international tourist**, from the whole of the integrated tax leviable thereon under section 5 of the Integrated Goods and Services Tax Act, 2017. Alongside, vide notification No. 10/2019-Integrated Tax (Rate), notification No. 11/2019-Central Tax (Rate) and notification No. 11/2019-Union territory Tax (Rate) all dated 29.06.2019, the retail outlets established in departure area of the international airport beyond immigration counters were notified under Section 55 of the CGST Act, 2017 and became entitled to claim **refund of all applicable Central tax, Integrated tax, Union territory tax and Compensation Cess paid by them on inward supplies of indigenous goods** received by them for the purposes of subsequent supply of goods to outgoing international tourists. Further, vide notification No. 31/2019 – Central Tax dated 28.06.2019, rule 95A was inserted in CGST Rules, 2017 to implement a scheme for refund of taxes paid on inward supply of indigenous **goods, which are supplied to** outgoing International Tourists by Duty Free Shop (DFS) and Duty Paid Shop (DPS) in departure area of international airport. Circular No. 106/25/2019-GST dated 29.06.2019 was also issued to provide for the detailed procedure for the grant of such refund.

1.4 Therefore, the position taken, based on recommendation of the GST Council, was that the sale from DFS outlets is **not 'export of goods'** and therefore, the DFS operator is not entitled to refund of unutilized ITC of inputs/ input services on supplies made to outgoing passengers, by treating them as zero-rated supplies, under Section 54(3) of CGST Act, 2017. Instead, an incentive was extended in such cases in the nature of refund of tax paid on indigenous inputs (goods only) under section 55 of CGST Act and no refund of tax paid on input services has been allowed. Para 8.2 of the Circular 106/25/2019 dated 29.06.2019 clearly states that ***"It is also clarified that no refund of tax paid on input services, if any, will be granted to the retail outlets"***. A plain reading of the impugned Circular indicates that the sale of goods from DFS has not been treated as export of goods in terms of section

54 (3) of CGST Act, 2017. Rather, a special dispensation for refund of inputs (and not input services) has been carved out for a particular class of persons (DFS) under section 55 of CGST Act, 2017.

2. Subsequent decisions of Hon'ble High Courts on the issue:

2.1 Subsequent to the insertion of Rule 95A and issuance of Circular 106/25/2019-GST, Hon'ble Bombay High Court, in the order dated 07.10.2019 in the matter of M/s Flemingo Travel Retail Limited & Ors vs UoI (W.P. Nos. 1511/2019 and 1535/2019), delivered a judgment in the matter of treatment of supplies made by duty free shops to the international passengers. This judgment was relied upon subsequently by the Hon'ble High Court of Kerala in their order dated 22.09.2020 in case of CIAL Duty Free and Retail Services Ltd vs. Union of India (W.P. No. 12274 of 2018).

2.2 The background of the case was that M/s Flemingo Travel Retail Limited (which runs duty free shops at the Mumbai Airport) had filed a writ petition against the order of Deputy Commissioner of Sales Tax, Mumbai denying the refund of the input tax credit pursuant to sale of duty free goods from the duty free shops at the departure area of airport. The Court in the order dated 07.10.2019, inter-alia, pronounced the following:

2.3 In case of goods sold by DFS at departure to outward international passengers

- a) The supply by the DFS to the outbound passenger constitutes exports by the DFS. Consequently, in terms of section 16(1) of the IGST Act, it becomes a zero-rated supply.
- b) Since, supply of goods from departure DFS is "export" and the same is not cleared for home consumption, the same does not fall under Schedule-III of CGST/SGST Act.
- c) The credit of the entire GST paid on input services is available to the Petitioner under section 16(1) of the CGST Act.
- d) Notifications issued under section 55 of the CGST/SGST Act are applicable only qua the indigenous goods, and not applicable to imported/ warehoused goods sold from or in the customs area. Hence, the provisions of Rule 89 would continue to apply to the refund of ITC for zero-rated supplies of imported/ warehoused goods by the DFS.

2.4 In case of goods sold by DFS at arrival to incoming passengers:

a) Before 1st February 2019

During the period between 1st July 2017 and 31st January 2019, the supply of goods from arrival DFSs has been treated as "export" by the revisional authority of Central Government vide order dated 31st August 2018 in a custom matter of Aarish Altaf Tinwala and this position has been affirmed by the Supreme Court by rejecting the writ petition filed against said order of revisional authority of Central Government vide its order dated 10th May 2019 in Writ Petition (c) No.564 of 2019. Hence by legal fiction, the supply of goods from arrival DFS would also be an export of goods under the IGST Act, and hence, a zero-rated supply. Since the zero-rated supply qualifies for 100% ITC, the Petitioner is eligible for the refund thereof.

b) After 1st February 2019

Effective from 1st February 2019, sale of goods from arrival DFS falls under entry 8(a) of Schedule III to CGST/SGST Act i.e. sale of goods from arrival DFS to incoming passenger is neither a supply of goods nor a supply of services. However, DFS can claim ITC on goods sold at arrival terminal to incoming passengers as w.e.f. 1st February 2019, section 17(3) of CGST Act, 2017 has been amended to do away with the need of reversal of ITC pertaining to activity specified in

Schedule-III of CGST Act, 2017. Accordingly, the Petitioner is eligible to claim ITC pertaining to arrival DFS also. Once this ITC is eligible, refund of entire ITC pertaining to departure and arrival DFS is available, based on formula of refund prescribed in Rule 89.

To sum up, the Hon'ble Court in the impugned judgment ruled that DFS shall be eligible for refund of ITC on sale of goods at arrival terminal to incoming passenger under Section 54(3) read with Rule 89 of CGST Act, 2017 for such sale affected before 1st February 2019 as well as after 1st February 2019.

2.5 The above judgment of Hon'ble High Court of Bombay was duly examined by the CBIC in consultation with the Additional Solicitor General (ASG) and based on the advice of the ASG, **it was decided not to file an SLP in the impugned matter.** On the same grounds, the judgement of Hon'ble High Court of Kerala was also accepted by the department.

3. Detailed analysis:

The impugned issue has been analyzed in detail. The Hon'ble High Court of Bombay and Hon'ble High Court of Kerala in their judgments dated 7.10.2019 and 22.09.2020 respectively have ruled that supply of goods by DFS is in the nature of zero-rated supply and therefore, refund provisions as mentioned in Section 54(3) of CGST Act, 2017 and Rule 89 of CGST Rules, 2017 are applicable. However, the present legal provisions including Rule 95A of CGST Rules, 2017 which have been implemented as per the recommendations of the GST Council, do not consider the supplies made by DFS to international passengers as zero-rated supplies as they are based on the presumption that in case of sale by DFS, it is the passenger who is the exporter and not the DFS. Therefore, as of today, there is a legal anomaly between the law pronounced by the Hon'ble High Court of Bombay and Hon'ble High Court of Kerala (duly accepted by the department) vis-a-vis the legal provisions which have been implemented with the approval of the GST Council. In view of this, there is an imminent need to take suitable policy measures for correcting this legal anomaly for the period since 01.07.2019, when rule 95A and related notifications were brought into effect. It is desirable that rules and notifications be amended to align them with the decision of Hon'ble High Courts to treat the supply of goods by Duty Free Shops to international passengers as zero-rated supply.

However, going forward, for the future period, policy decision needs to be taken whether there is any need to amend the Act/ Rules for restricting the refund to DFS on account of supplies made by them to international passengers either at Arrival Terminal or also in respect of sales made at Departure Terminal or both. The policy measures/options were discussed by the Law Committee and it recommended the following policy measures:

4. Immediate measure required: To amend the rules and notifications to align them in line with the decision of Hon'ble High Courts to treat the supply of goods by Duty Free Shops as zero-rated supply

It is noteworthy to point out that the Government has accepted Hon'ble Bombay High Court's order dated 07.10.2019 in the matter of Flemingo Travel Retail Limited & Ors vs UoI (W.P. Nos. 1511/2019 and 1535/2019), as well as the order dated 22.09.2020 of Hon'ble Kerala High Court in case of CIAL Duty Free and Retail Services Ltd vs. Union of India and decided not to file SLP (Special Leave Petition) before the Hon'ble Supreme Court in both the cases. However, Rule 95A of CGST Rules, 2017 and Circular No. 106/25/2019-GST dated 29.06.2019 have not been rescinded. Therefore, there is a need to remove this legal contradiction by rescinding Rule 95A of CGST Rules,

2017 and Circular No. 106/25/2019-GST dated 29.06.2019 **ab initio**, and thus, allow refund of accumulated ITC on inputs and input services to DFS under section 54(3) of CGST Act in respect of supplies made to outgoing international passengers by treating them as zero-rated supplies. This would also require rescinding notification No. 10/2019-Integrated Tax (Rate), notification No. 11/2019-Central Tax (Rate) and notification No. 11/2019-Union territory Tax (Rate) all dated 29.06.2019, notification No. 31/2019 – Central Tax dated 28.06.2019. These measures will bring the rules/ notifications in line with the order of the Hon'ble High Court of Bombay in the case of Flemingo Travel Retail Limited and the order of the Hon'ble High Court of Kerala in the case of CIAL Duty Free and Retail Services Ltd., which have been accepted by the Government.

5. Proposed policy measures for future period:

5.1. With respect to goods sold to incoming passengers from DFS at Arrival Terminal:

5.1.1 Excluding refund in respect of ITC on inputs/ input services pertaining to DFS at Arrival Terminal by amending Explanation to sub-section (3) of section 17 of CGST Act by including certain transactions under paragraph 8(a) of Schedule III of CGST Act in the value of exempt supply

Proposed amendment in Section 17(3) of CGST Act, 2017

Sub section (2), read with sub-section (3), of Section 17 of CGST Act, 2017 provides that where the goods or services or both are used partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, availment of ITC will be restricted only to the extent such input tax is attributable to the taxable supplies, including zero rated supplies. Further, explanation to sub-section (3) of section 17 clarifies that for the purpose of the said sub-section, “value of exempt supply” shall not include value of activities or transactions specified in paragraph 5 of the Schedule III, except those specified in paragraph 5 of the said schedule. In the case of M/s Flemingo mentioned above, Hon'ble Mumbai High Court has taken a view that as with effect from 01.02.2029, paragraph 8 (a) has been inserted in Schedule III of CGST Act, providing for “supply of warehoused goods to any person before clearance for home consumption”, the supply of goods by DFS to international passengers in Arrival Hall of the International Airport will stand covered by this paragraph and thus will be considered neither a supply of goods nor a supply of services with effect from 01.02.2019. Further, as per sub-section (2) of section 17, read with Explanation to sub-section (3) of section 17 of CGST Act, reversal of ITC will also not be required to be made in respect of input tax attributable for such transactions or activities. The net effect of the same will be that the DFS operator will be able to claim refund of accumulated ITC in respect of all inputs/ input services for both Arrival as well as Departure DFS. There did not appear to be any intention of the Government/ GST Council to extend the benefit of refund in respect of supplies made from Arrival DFS. In view of this, in order to deny benefit of refund of input tax credit in respect of supplies made from Arrival DFS, the input tax credit in respect of Arrival DFS may be required to be reversed under sub-section (2) of section 17, read with sub-section (3) of the said section, by including transactions under para 8(a) of Schedule III in the value of exempt supply by substituting Explanation to sub-section (3) of section 17 of CGST Act, 2017 as proposed below:

*“Explanation: For the purpose of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except---
(a) the value of activities or transactions specified in paragraph 5 of the said Schedule; and*

(b) the value of such activities or transactions as may be prescribed in respect of paragraph 8(a) of the said Schedule.”

The law committee further recommended that the supplies from DFS at arrival terminal to the incoming passengers may be prescribed through the Rules under the above proposed clause (b) of the Explanation to sub-section (3) of section 17 of CGST Act, 2017, whose value shall not be excluded for calculation of “value of exempt supply”.

5.2 With respect to goods sold to outgoing passengers from Departure DFS

The Law Committee recommended no changes/ amendments in the CGST Act/ CGST Rules in respect of supplies from DFS at departure terminal.

6. The following recommendations of the Law Committee as detailed in Paragraph 4 and Paragraph 5 above, are placed for deliberations and approval by the GST Council:

- i. To rescind rule 95A of the CGST Rules, 2017 and Circular No. 106/25/2019-GST dated 29.06.2019 **ab initio**;
- ii. To rescind notification No. 10/2019-Integrated Tax (Rate), notification No. 11/2019-Central Tax (Rate) and notification No. 11/2019-Union territory Tax (Rate) all dated 29.06.2019 and notification No. 31/2019 – Central Tax dated 28.06.2019;
- iii. To amend sub-section (3) of section 17 of CGST Act, 2017, by substituting the existing Explanation with following explanation:

“Explanation: For the purpose of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except---

(a) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

(b) the value of such activities or transactions as may be prescribed in respect of paragraph 8(a) of the said Schedule.”

- iv. Post amendment in sub-section (3) of section 17 of CGST Act, the supplies from DFS at arrival terminal to the incoming passengers to be prescribed through the Rules under the above proposed clause (b) of the Explanation to sub-section (3) of section 17 of CGST Act.

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

1. 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 25th November, 2021, 10th March, 2022, 21st March, 2022, 26th March, 2022, 5th April, 2022, 12th April, 2022, 30th May, 2022 and 9th June, 2022 and had detailed discussions on representations 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 summarized 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.

Annexure-I

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
1.	Ostomy Appliances (including pouch or flange, stoma adhesive paste, barrier cream, irrigator Kit, sleeves, belt, micro-pore tapes) [3006 91 00]	12%	Nil	<ol style="list-style-type: none">1. A colostomy bag, also called a stoma bag or ostomy bag, is a small, waterproof pouch for collecting waste from the body, used by patients suffering from ulcerative colitis, Crohn's disease, diverticulitis, colo-rectal cancer, etc.2. Ostomy bags are either disposable (one time use, generally changed once per day) or drainable (re-usable, discarded after 3-4 days). Usage is prolonged/ lifelong.3. Ostomy bags are similarly placed (though not same or identical) as urine collection bags.4. Concessional rate of 5% is available for Urine bags <i>vide</i> S. No. (8) under entry (E) of List 3 of Entry 257 of Schedule-I of Notification No:01/2017-Central Tax (Rate).5. Fitment Committee examined the issue and

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
				recommends reduction in GST rate on ostomy appliances to 5%.
2.	Orthopaedic implants (Trauma, Spine, and Arthroplasty Implants in body); Orthoses (Splints, braces, belts & calipers); Prostheses (artificial limbs) [9021]	5% for specified items, 12% otherwise	5% for all	<p>1. S. No. 257 –Schedule I prescribes 5% GST rate for Assistive devices, rehabilitation aids and other goods for disabled, specified in List 3. List 3 <i>inter alia</i> includes following entries –</p> <ul style="list-style-type: none"> • B (1) - Orthopaedic appliances falling under heading No. 90.21 of the First Schedule • E (9) - Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement <p>2. Further, S. No. 221- Schedule II prescribes 12% GST rate on Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens [other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids.] falling under CTH 9021.</p> <p>3. Duality of rates on similar items falling under heading 9021 is thus causes confusion and request has been received for clarification.</p> <p>4. It may be mentioned that Hearing aids, which also fall under CTH 9021 attract Nil rate of GST. However, it is a well-defined separate item, as against the multiple types of orthopaedic appliances/ implants.</p> <p>5. Fitment Committee examined the issue and considering the nature of goods which fall under heading 9021 (and also noting that entry falling under 5%, as mentioned above, are wide enough to cover almost all goods falling under heading 9021) recommends that uniform GST rate of 5% be prescribed for all items under CTH 9021 (except hearing aids, which attracts</p>

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
				Nil GST rate).
3.	Polished Napa Stone [2515 20 90]	5% or 18%	Issue clarification that Napa stone <u>without mirror polishing</u> attracts GST @ 5%	<ol style="list-style-type: none"> 1. S. No. 123 – Schedule I prescribes GST @ 5% for ‘<i>Ecaussine and other calcareous monumental or building stone; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use.</i>’ 2. Napa stone is a variety of dimensional limestone. 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), <i>other than ready to use mirror polished stones, to 5%</i>. The entry in the notification was drafted in consultation with the State of Rajasthan and Andhra Pradesh. 4. Currently all polished stone tiles; including other similarly place stones like Kota stone as well as ceramic tiles attract 18% GST rates. 5. The GST Council in its 45th Meeting had, upon a request by Hon’ble Chairperson, had directed that the issue relating to Napa stone be examined by Fitment Committee for clarification. Hon’ble Member from Andhra Pradesh had observed in the meeting that Napa Stone is never mirror polished and that being brittle it cannot be subject to such level of finishing. 6. Subsequently, State of Andhra Pradesh made a presentation before the Fitment Committee (enclosed as Annexure-A). It was <i>inter alia</i> informed that minor polished stones cannot be treated on par with mirror polished stones, and Napa stones, being excavated from mines in layer forms, cannot be subjected to such extensive polishing (‘mirror polishing’). 7. A clarification to this extent has been requested that Napa stones without ‘Mirror finishing’, even though ready to use, are taxable @ 5% as per the entry 123 of Schedule-I.

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments									
				8. Fitment Committee examined the issue and recommends, in the context of napa stone tiles, that by way of clarification it may be reiterated that except mirror polished stones (excluding marble and granite) other stone even if they are minor polished shall be covered by entry at S. No. 123 of 5% rate schedule.									
4.	Mango pulp/ puree; [0804]	12%	Nil/ 5% Issue clarification regarding HSN classification in 2007	<div>1. CTH heading 0804 covers <i>Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh and dried</i>. Mango pulp is specifically covered under tariff item 0804 50 40.</div> <div>2. All goods under CTH 0804, in fresh state are exempt, whereas all these goods under CTH 0804, in dried form, <u>initially</u> attracted 12% GST rate, as per following erstwhile entry of Schedule II, -</div> <table border="1"><tr><td>16.</td><td>0804</td><td>Dates (soft or hard), figs, pineapples, avocados, guavas, mangoes and mangosteens, dried</td></tr></table> <div>3. Subsequently, in 22nd GST Council Meeting in Oct, 2017, reduced rate of 5% was recommended for ‘<i>mangoes sliced, dried</i>.’ Accordingly, new entry 30A was created in Schedule I for 5% rate as follows-</div> <table border="1"><tr><td>30A</td><td>0804</td><td>Mangoes sliced, dried</td></tr></table> <div>And, the word ‘mangoes’ (instead of ‘mangoes sliced, dried’) was omitted from entry 16 of Schedule-II as follows-</div> <table border="1"><tr><td>16.</td><td>0804</td><td>Dates (soft or hard), figs, pineapples, avocados, guavas, mangoes and mangosteens, dried</td></tr></table> <div>4. The intent of said changes was to provide for</div>	16.	0804	Dates (soft or hard), figs, pineapples, avocados, guavas, mangoes and mangosteens, dried	30A	0804	Mangoes sliced, dried	16.	0804	Dates (soft or hard), figs, pineapples, avocados, guavas, mangoes and mangosteens, dried
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S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments			
				<p>further reduced rate of 5% only to ‘Mangoes sliced, dried’. However, all forms of ‘mangoes’ under CTH 0804 were omitted from Schedule-II (12%) by the manner the entry was drafted.</p> <p>5. Under these circumstances, the Appellate Authority for Advance Ruling (Andhra Pradesh) held in its Order dated 20th Jan, 2022, that mango pulp/ puree is classifiable under tariff item 0804 50 40 and attracts 18% GST rate under residual entry.</p> <p>6. References have also been received to classify the item under CTH 2007/ 2008 (‘pulp’/ ‘puree’). The goods falling under both the headings, that is, 2007 and 2008, also attract GST at the rate of 12% <i>vide</i> Sl. No. 39 and 40 respectively of schedule II of notification No. 1/2017 CT(Rate) dated 28.06.2017.</p> <p>7. These are value added processed products and attract GST at the rate of 12%.</p> <p>8. As evident from records of 28th GST Council Meeting, only the rate of ‘Mangoes sliced, dried’ were to be further reduced to 5% from 12%. However, this inadvertently led to excessive exclusion of other forms of mango from 12% Schedule.</p> <p>9. Fitment Committee recommends a clarification may be issued that the rate on all forms of mango, dried, under CTH 0804 (other than mangoes sliced, dried) was always meant to be 12%. To avoid ambiguity, it is further recommended that entry 16 of Schedule II may be modified as follows-</p> <table><tr><td>16.</td><td>0804</td><td>Dates (soft or hard), figs, pineapples, avocados, guavas, <u>mangoes (other than mangoes sliced, dried)</u> and mangosteens, dried</td></tr></table>	16.	0804	Dates (soft or hard), figs, pineapples, avocados, guavas, <u>mangoes (other than mangoes sliced, dried)</u> and mangosteens, dried
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S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments												
5.	By-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi etc. [2302]	5%	Nil (Issue clarification that the applicable GST rate is Nil as these are directly being consumed by as cattle feed.)	<div>1. The by-products of milling of pulses/ dal such as Chilka, Khanda and Churi are appropriately classifiable under HS 2302 that consists of goods having description as bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.</div> <div>2. The applicable GST rate on products falling under HS 2302 is as under:</div> <table><tr><th>Notf. No.</th><th>HSN</th><th>Description</th><th>Rate</th></tr><tr><td>S. No. 102 of Notfn No. 2/2017-CT(R)</td><td>2301 , 2302 , 2308 , 2309</td><td>Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]</td><td>Nil</td></tr><tr><td>S. No. 103A of Schedule - I Notfn No. 1/2017-CT(R)</td><td>2302</td><td>Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]</td><td>5%</td></tr></table>	Notf. No.	HSN	Description	Rate	S. No. 102 of Notfn No. 2/2017-CT(R)	2301 , 2302 , 2308 , 2309	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]	Nil	S. No. 103A of Schedule - I Notfn No. 1/2017-CT(R)	2302	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
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S. No. 103A of Schedule - I Notfn No. 1/2017-CT(R)	2302	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%													

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>3. The dispute in applicable GST rate revolves around the central argument that as to whether such by-products are being directly consumed as cattle feed.</p> <p>4. While milling of pulses/ dal, a wide range of by-products such as <i>chilka</i>, <i>khanda</i>, <i>churi</i>, etc. are obtained, preferred by cattle feed and dairy industry for better palatability and high nutritive value. The by-products obtained before being packed are ensured to go through re-processing for producing best quality of cattle feed having uniform colour, size, aroma, nutrition and purity.</p> <p>5. As per the IS 2052: 2009 issued by BIS, Grain By-products has been categorized as one of the ingredients of the compounded cattle feed.</p> <p>6. The subject goods are <u>ingredients</u> of cattle feed, while residual products of milling are at 5% GST rate. The subject goods thus attract 5% GST rate and a clarification may accordingly be issued.</p> <p>7. Further, the differential GST rate on animal feed ingredients and animal feed has been subject to a lot of litigation. For example: Fishmeal, Meat cum Bone Meal, Distiller's dried grains with solubles (DDGS) etc.</p> <p>8. A uniform rate of 5% on the entire Chapter 23 (except dog or cat food falling under CTH 2309) would address the issue. If this is done, cattle feed, de-oiled cake/rice bran, cotton seed oil cake would move from nil to 5%.</p> <p>9. Fitment Committee examined the issue and recommends that a clarification as above may be issued. However, in view of the prevailing multiple interpretations, recovery on account of this issue, for past periods, may not be insisted upon. Fitment Committee further recommends that the GoM on Rate Rationalization may consider uniform GST rate of 5% on all items Chapter 23 (with exception of dog or cat food</p>

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
				under CTH 2309).
6.	Specified defence items imported by private entities/vendors, when end-user is the Defence forces	Applicable IGST rate	Nil IGST on import	<ol style="list-style-type: none"> 1. Presently the exemptions from BCD and IGST is available on imports made by the armed forces and the DPSUs/PSUs for defence items specified in notification No. 19/2019-Customs. 2. This exemption is subject to certification of imports by the Ministry of Defence and is available for limited period up to 30th June, 2024. 3. Originally, said exemption was only for imports by Ministry of Defence or by the Defence Forces. Subsequently, imports by Defence Public Sector Units (DPSUs) or other (PSUs) for defence forces was also included vide notification 3/2020-Customs. 4. Allowing exemption to imports by private sector, if the end user are the defence forces, may ease the availability of critical defence related items. Concession is only for a limited duration. 5. Fitment Committee examined the issue and recommends that the said BCD and IGST exemption on specified defence items may be extended to imports by private entities provided that the end user is the Defence Forces.
7.	Sewage Treated Water [2201]	18%	Nil	<ol style="list-style-type: none"> 1. The description at S. No. 99 of notification 2/2017-CT(Rate) providing Nil GST rate reads as - “Water [other than aerated, mineral, <u>purified</u>, distilled, medicinal, ionic, battery, demineralized and water sold in sealed container]”. 2. Advance Ruling Authority, Maharashtra, in two separate instances has ruled that these goods are covered under S. No. 24 of Schedule III, attracting 18% GST. 3. As per these Rulings, the issue is whether the word ‘purified’ in S. No. 99 covers ‘treated sewage water’ as well, as a result of which the said goods will be excluded from exemption

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>and covered under 18% GST.</p> <p>4. It is clear from these entries that premium; commercial water products were to be taxed, whilst regular water such as municipal supply, etc is to be at Nil GST rate. Presence of word 'purified' in exclusion to exemption has caused confusion in this case.</p> <p>5. Fitment Committee examined the issue and recommends that the word 'purified' may be omitted from the exception under S. No. 99, thereby making it clear that sewage treated water attracts Nil rate of GST.</p>
8.	Electric vehicles [87]	5%	Issue clarification that electric vehicles, whether fitted with battery or not, attract 5% GST rate	<p>1. In terms of Sl.242 A of Schedule 1 to Notification No.1/2017 – Central Tax (Rate) dated 28/06/2017, “<i>Electrically operated vehicles, including two and three wheeled electric vehicles</i>” classified under Chapter 87 are taxable @ 5%.</p> <p>2. "Electrically operated vehicles" for the purposes of the above entry is defined in the explanation to the entry in Sl.242 A as “.....vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles”</p> <p>3. There have been different interpretations by various Advance Ruling Authorities as to whether electric vehicles, not yet fitted with a battery, will be eligible for concessional rate of duty @5%.</p> <p>4. Fitment Committee examined the issue and recommends that suitable clarification be accordingly issued that electric vehicles whether or not fitted with a battery pack, are eligible for the concessional rate @ 5%.</p>
9.	Tetra Pak (Aseptic Packaging)	12%	18%	<p>1. Tetra pack involves multiple layers with inside layer of polyethylene/aluminium, which increases the shelf life of the products, without</p>

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
	Paper) [4811]			<p>requirements of preservatives</p> <p>2. Other substitutes for ‘Tetra Pak’ are cartons, plastic bottles, sachets and pouches (including bag-in-box), and plastic cups. GST rate of other substitutes is as follows –</p> <p style="padding-left: 40px;">(a) Cartons – 18%</p> <p style="padding-left: 40px;">(b) Plastic bottles/sachets/cups – 18%</p> <p>3. Recycling of Tetra Pak cartons is not economical and not linear (recycling allows some amount of inputs to be extracted, but not Tetra Pak itself).</p> <p>4. In 45th GST Council, a uniform GST rate of 18% on various kinds of packaging such as cartons, boxes, bags, cases, etc was recommended.</p> <p>5. If 18% GST rate is prescribed on Tetra Pak, there will be uniformity of tax structure with respect to other substitutes and therefore, a uniform rate of 18% may be prescribed for all such kinds of packaging.</p> <p>6. Fitment Committee examined the issue and recommends that GST rate of 18% may be prescribed for Aseptic packaging paper, including Tetra Pak.</p>
10.	Tar from Coal Gasification plants, producer Gas plants and Coke Oven Plants. [2706]	18%	5% Or Clarification may be issued regarding applicable rate	<p>1. At the time of advent of GST, 5% GST rate was prescribed for tar distilled from coal, lignite or peat (S. No. 163-Schedule-I). No rate was prescribed for coal tar obtained from other sources.</p> <p>2. Subsequently, in the 23rd GST Council Meeting held on 10th November, 2017; it was recommended that a specific entry be provided for coal tar obtained from other sources. (S. No. 30A-Schedule-III prescribing 18% GST rate for other tars under CTH 2706)</p> <p>3. The Explanatory Notes to HSN state that tars obtained from water gas producers during gasification of coals falls under other mineral</p>

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>tars (thereby attracting 18% GST rate).</p> <p>4. Tar from coal gasification and other mineral tars have industrial use, for manufacturing value-added products such as paints, synthetic dyes, medicinal shampoos/ soaps and ointments, etc. ITC can be availed on these finished goods.</p> <p>5. Dual rates on similar products based on origin, which themselves are similar (tar from coal versus tar for coal gasification) is causing confusion.</p> <p>6. Fitment Committee examined the issue and recommends that uniform GST rate of 18% for all goods under CTH 2706 may be prescribed.</p>
11.	Nicotine Polarilex Gum [HS 2404 91 00]	18%	Clarification on classification and applicable rate	<p>1. Notification No. 18/2021 – Central Tax (Rate) dated 28.12.2021 was issued to implement the WCO 2022 HS Codes transposition with effect from 01.01.2022.</p> <p>2. Accordingly, a new entry was created, that is, HS 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation.</p> <p>3. As per HS Explanatory notes 2022, heading 2404 includes <i>nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body's dependence on this substance.</i></p> <p>4. 'Nicotine Polacrilex gum' is commonly used to aid in smoking cessation in adults. Using a controlled amount of nicotine helps reduce nicotine withdrawal symptoms when you quit smoking.</p> <p>5. Further, HS 2404 91 00 squarely covers the item under question with applicable GST rate of 18% (as earlier) <i>vide</i> newly inserted entry at Sl. No. 26B in Schedule III to notification No.</p>

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments										
				<p>1/2017 – Central Tax (Rate) dated 28.06.2017 by notification No. 18/2021 – Central Tax (Rate) dated 28.12.2021.</p> <p>6. Fitment Committee recommends that clarification on the matter may be issued.</p>										
12.	<p>Diethylcarbamazine (DEC) tablets supplied free of cost to National Filariasis Elimination Programme</p> <p>[Chapter 30]</p>	5%	Nil IGST on import	<p>1. Used in Mass Drug Administration to eliminate Lymphatic Filariasis (LF) under WHO's Global Programme to Eliminate Lymphatic Filariasis (an endemic disease). India is also a beneficiary of this programme.</p> <p>2. DEC tablets are manufactured by an entity in SEZ and supplied to WHO India for the programme. It is informed that GST so far had been borne by the SEZ manufacturing entity on behalf of WHO.</p> <p>3. GST Council, in its 43rd Meeting had reduced the GST on DEC tablets from 12% to 5%.</p> <p>4. Ministry of Health and Family Welfare has recommended Nil IGST on import of such medicines supplied free of cost for Central/ State Government sponsored public health programmes on similar lines as entry No. 212A of notification No. 50/2017-Customs, which states as follows-</p> <table border="1"> <thead> <tr> <th>CT H</th><th>Description</th><th>B C D</th><th>I G S T</th><th>Cond .</th></tr> </thead> <tbody> <tr> <td>30</td><td>Medicines/drugs/vaccines supplied free by United Nations International Children's Emergency Fund (UNICEF), Red Cross or an International Organisation subject to specified conditions. Explanation: For the purpose of this</td><td>Nil</td><td>Nil</td><td>103</td></tr> </tbody> </table>	CT H	Description	B C D	I G S T	Cond .	30	Medicines/drugs/vaccines supplied free by United Nations International Children's Emergency Fund (UNICEF), Red Cross or an International Organisation subject to specified conditions. Explanation: For the purpose of this	Nil	Nil	103
CT H	Description	B C D	I G S T	Cond .										
30	Medicines/drugs/vaccines supplied free by United Nations International Children's Emergency Fund (UNICEF), Red Cross or an International Organisation subject to specified conditions. Explanation: For the purpose of this	Nil	Nil	103										

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments				
					notification, - “International Organisation means an International Organisation to which the Central Government has declared, in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947 (46 of 1947), that the provisions of the Schedule to the said Act shall apply			
				5. In the instant case, medicines are supplied by SEZ manufacturing unit to WHO India.				
				6. Fitment Committee examined the issue and considering the importance of the medicines supplied free of cost in elimination of the disease, recommends that suggestion of Ministry of Health to exempt IGST on import of DEC tablets supplied free of cost for the National Filariasis Elimination Programme, may be accepted.				
13.	Fly Ash Bricks [6815]	12% with ITC, or 6% without ITC	Clarification that condition of 90% fly ash content applies only to fly ash aggregate, and not fly ash bricks.	1. Fly ash bricks currently attract GST at rate of 12% (with ITC) vide entry at serial no. 176B of Schedule II currently reads as follows-				
				S. No.	Chapter/ heading/ sub- heading/ tariff item	Description		
				176B	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks		

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>2. The GST Council in its 23rd Meeting, while approving the proposal to reduce GST rate on fly ash bricks from 12% to 5%, also recommended reduction in GST rate on fly ash aggregate with 90% or more fly ash content, from 12% to 5%. The same treatment to Fly ash blocks was added as per recommendations of 31st GST Council Meeting. The rate on these items was further modified to 12% with ITC or 6% without ITC as per recommendations of the 45th GST Council Meeting, notified vide 01/2022-CT(Rate) and 02/2022-CT(Rate).</p> <p>3. As per minutes of the 23rd GST Council Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate. However, Advance Ruling Authority has taken view that it applies to Fly Ash bricks also, and therefore, fly ash bricks with less than 90% fly ash content attract 18% GST as residual rate.</p> <p>4. Fitment Committee examined the issue and recommends that a suitable clarification be issued for the past that the condition of 90% or more fly ash content was applicable only for fly ash aggregate. To avoid confusion, the Committee also recommends that the condition of 90% fly ash content be removed altogether from the entry as a simplification measure.</p>
14.	Cut and Polished diamond [71]	0.25%	1.5%	<p>1. Reduced rate is causing duty inversion and blockage of ITC for gems and jewellery industry.</p> <p>2. Fitment Committee examined the issue and agreed that there is duty inversion which may be corrected by way of increase in GST rate on Cut and Polished diamonds.</p> <p>3. However, the Committee further noted that since a Group of Ministers (on rate rationalization) is currently examining the issue of IDS correction, the issue may be dealt with by the GoM.</p>

**b) Issues where no change has been proposed by the Fitment Committee in relation to goods -
Annexure II**

Annexure-II

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
1.	Molasses used for making cattle feed, purchased by cooperative milk unions [1703]	28%	Nil	<p>1. Molasses attracts GST rate of 28%. To prepare cattle feed, a pre-formulated amount of various types of grains, vitamins and mineral mixture are added along with molasses. Molasses is an agricultural product of sugarcane industries. As per BIS standard for cattle feed, molasses is to be mixed along with grains, vitamins, etc.</p> <p>2. Full exemption for such molasses is requested on grounds that Co-operative milk Unions supply cattle feed to farmers without any profit margin.</p> <p>3. Fitment Committee examined the issue and felt that end use-based exemptions are difficult to administer and need to be discouraged. Fitment Committee does not recommend any change.</p>
2.	Perishable Fruits & Vegetables, cut; in brine or syrup; crushed or in pulp form. [07, 08, 20]	5%/12%	Nil	<p>1. The request is for Nil GST rate on these goods on grounds that it is necessary to secure the Fruits & Vegetables in a storable form for subsequent industrial use by conducting the following steps.</p> <p>i. Cutting, Brining, Syruping of Fruits & Vegetables</p> <p>ii. Pulping, Crushing of Fruits & Vegetables</p> <p>2. These are value add products having taxable inputs and services.</p> <p>3. May not be agreed to.</p>
3.	Pickles, Chutneys [2001, 2004]	12%	5%	<p>1. The request is for reduction of GST rate from 12% to 5% on grounds that these are not elitist products, and can be seen being served at roadside stalls, street vendors, community festivals, places of pilgrimage, institutional messes etc.</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	Sauces [2103] Fruit Drinks [2009]			2. Similar requests have been examined by the Council in its 37 th Meeting held on 20 th Sep, 2019. Council did not recommend any change. 3. May not be agreed to.
4.	Ready to Eat Food, Ready to Cook Foods, Instant Food Mixes etc. [2106]	18%	5%	1. Reduction of GST rate to 5% on these goods requested on grounds that Ready-to-Eat Food, Ready-to-Cook Foods, and Instant Food Mixes etc. facilitate working women as it saves time. 2. Instant food mixes are value added products. Similar request has not been considered in past by the Council in its 16 th , 25 th , 31 st and 37 th Meetings. 3. Fitment does not recommend any change.
5.	Branded (i.e., Packaged) Snack Foods [2106 90]	12%	5%	1. Namkeens, bhujia, mixture, chabena and similar edible preparations ready for consumption (other than roasted gram), put up in unit container and bearing brand name, attract higher GST rate of 12%. Otherwise, these goods attract GST at rate of 5%. 2. The GST rate on these branded items also is sought to be reduced to 5% on the grounds that the present differential rate encourages unpackaged food, which is unhealthy. 3. Branded food entails higher value addition. It is conscious decision of the Council to keep branded packaged food like chips etc at higher rate than unbranded food. 4. No change proposed.
6.	Biomass Briquettes and Pellets	5%	Nil	1. To incentivize utilisation of agri-farm waste, especially for sustainable energy projects, reduction of GST rate on these goods has been

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	etc [Any Chapter]			requested. 2. Fitment Committee observed that Biomass briquettes or solid biofuel pellets already attract concessional 5% GST rate and accordingly felt that further reduction in GST rates is not required. The rate was reduced to 5% on the recommendation of Council in its 28 th Meeting in July,2018. Accordingly, it, did not recommend any change in the existing GST rate
7.	Medical devices [9018, 9019]	12%	5%/Nil	1. Most medical devices under CTH 9018 and 9019 attract GST rate at 12%. Few specified items such as renal dialysis equipment, coronary stent, etc attract lower GST rate of 5%. 2. Reduction of duty has been requested to give boost to med-tech industry. 3. The current duty rate of 12% is optimal in order to reduce inversion while still providing a concessional rate. 4. No change recommended.
8.	Walnut, Kernel and Walnut Shell [0802]	5%	Nil	1. Fitment Committee observed that most of the dried fruits in Chapter 8 like almond attract 12% GST. In this regards walnut and cashew are exception to have been placed at lower rate of 5%. Hence request for lowering of rate further has no merit.
9.	Panchgavya (indigenous cow products) [Any Chapter]	As Applicable	Nil	1. Fitment Committee observed that the request is too generic and it would be difficult to identify products made out of cow products and will lead to lot of litigation. 2. Exempting such supplies may lead to inverted duty structure and distort the supply chain of ITC. 3. Further, it is difficult to establish the exact proportion of different ingredients in such products and monitoring the same may not

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				practically feasible, and may lead to mis-declaration and evasion. 4. Fitment Committee does not recommend any change
10.	Used Lead Acid Batteries (ULAB) [8548 or 8549]	18%	5%	1. Used lead acid batteries are treated as scrap and attract a GST rate of 18%. 2. Further, various kinds of metal scrap also attract a GST rate of 18%. 3. It has been requested that reducing rate on these goods will help the organized recycling sector. 4. Fitment Committee examined the issue and does not recommend any change.
11.	Evrysdi (Risdiplam) [30, 9804]	12%/ Nil on imports for personal use	Nil	The applicable GST rate on medicines (other than few specified drugs which attract concessional rates) is 12%. Drugs specified in List-1 appended to Schedule-I of notification 1/2017-CT(Rate) attract GST rate of 5% under S. No. 180 of said notification. 1. For medicines used in treatment of SMA imported for personal use, Nil rate of IGST on import is prescribed under certain conditions. 2. Health has not recommended any rate reduction on this medicine. 3. Fitment Committee observed that Department of Pharmaceuticals has not supported the request and accordingly does not recommend any change in the existing GST rates.
12.	Rooftop Solar Projects and DCR modules [8541]	12%	5%	1. The GST rate on solar power generating systems was rationalized from 5% to 12% to correct inverted duty structure, on recommendations of 45 th GST Council Meeting. 2. It has been requested to re-instate the earlier concessional rate of 5% for limited period for

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>projects under implementation.</p> <p>3. The inverted duty structure led to blocking of working capital for the domestic manufacturers of renewable energy equipment.</p> <p>4. Fitment Committee examined the issue and does not recommend any change.</p>
13.	Activity performed by International Rice Research Institute (IRRI)	As applicable	Nil	<p>1. Exemption from the purview and levy of GST and applicability of GST on the activities performed by IRRI has been requested.</p> <p>2. IRRI is notified under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947),</p> <p>3. Fitment Committee observed output supplies by any of the other international organizations registered under section 3 of the United Nations (Privileges and Immunities) Act, 1947 have not been exempted from GST.</p> <p>4. Accordingly, Fitment Committee does not recommend any change in the existing GST rates.</p>
14.	Meat and Dairy products [Chapter 2, 3,4, 16]	Nil/ 5%	28% + compensation cess	<p>1. The consumption of meat and dairy products is sought to be discouraged by increasing the GST rate to 28% plus compensation cess. The rationale provided is that such consumption adversely impacts environment, human health and accentuates problem of hunger.</p> <p>2. Fitment Committee observed that taxation may not be the tool for the purpose. GST rate has been consciously prescribed as 5% for branded and packed in unit container, nil for other goods falling under said tariff headings.</p> <p>3. No change proposed.</p>
15.	Meat, Bones, Flesh and horn [Chapter 2,	Nil	5%	<p>1. Increase in GST rate has been requested as these items are exported in large quantities, and it is claimed that such exports are funding hawala business.</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	5]			<p>2. Fitment Committee observed that exports do not attract GST (are zero rated). Hence GST rate change is not a solution to the problem raise.</p> <p>3. No change recommended.</p>
16.	Branded Khoya & branded Paneer [0406]	5%	Nil	<p>1. Reduction of GST rate to Nil on branded <i>Khoya</i> and <i>Paneer</i> is sought to dis-incentivise loose/ unpacked sale which is not hygienic.</p> <p>2. Council prescribed a 5% rate on branded products considering the nature of consumption of branded products and also value addition involved.</p> <p>3. No change proposed.</p>
17.	Food items of mass use particularly spices and edible oils which are packaged in small containers or sachets	Applicable rate	Nil	<p>1. Reduction of GST rate have been requested on these items for which are packaged in small containers or sachets, to bring them within the reach of common as well as poor people.</p> <p>2. The request is too generic. Prescribing GST rate on such criterion may not be feasible.</p> <p>3. No change proposed.</p>
18.	Pneumatic Tyres used in e-rickshaw [4011] Tubes [4013]	Tyres @28% and Tubes @18%	12%	<p>1. Pneumatic Tyres [4011] and inner tubes [4013], of a kind used in bicycles, cycle-rickshaws and 3-wheeled powered cycle rickshaws attract GST rate of 5%. (S. No. 190 of Schedule-I)</p> <p>2. Other tyres attract GST rate of either 18% (used pneumatic or re-treaded – S. No. 121A-Schedule III) or 28% (new pneumatic- S. No. 46 of Schedule-IV).</p> <p>3. Other inner tubes attract GST rate of 18% (S. No. 121B-Schedule-III).</p> <p>4. Fitment Committee examined the issue and</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				does not recommend any change in the existing GST rate.
19.	Addition of name of Industrial and Commercial Bank of China and RBL Bank as a banking institution for exemption of Integrated Goods and Services Tax (IGST) in notification No. 77/2017-Customs dated 13.10.2017 as amended.	3%	Nil	<ol style="list-style-type: none"> 1. The IGST exemption is available on imports of gold, silver and platinum by specified nominated agencies. 2. Industrial and Commercial Bank of China and RBL Bank are not included in the specified list 34 of notification No 50/2017-Customs dated 30.6.2017 which contains name of nominated agencies granted IGST exemption on such imports. 3. These entities have been made nominated agencies by DGFT/ MoC to import gold and silver. 4. In 37th GST Council Meeting, an entity namely Diamond India Ltd. was added to the list based on recommendation of Export Committee. The inclusion of RCBC and RBL banks was deferred as Export Committee had not made any recommendation for inclusion of these entities in the List. 5. Fitment Committee examined the issue and does not recommend any change in the status quo.
20.	Heating, Ventilation, Air-conditioning machine [8415]	28%	12%/18%	<ol style="list-style-type: none"> 1. Input, such as metals, used in the making of Heating, Ventilation, Air-conditioning machine already attract 18% GST. 2. Also, lowering the GST rate on these machines may result in significant adverse revenue implications. 3. No change recommended.
21.	Mechanical sprayers (of all types, whether or not hand operated and	12%	5%	<ol style="list-style-type: none"> 1. Keeping in view various requests/representations, GST Council in its 25th council meeting, dated 18.01.2018 recommended to reduce GST rate on 'mechanical sprayers of all types whether or not hand operated' from 18% to 12%.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	their exclusive spare parts) [8424]			<p>2. Accordingly, mechanical sprayers attract 12% GST rate with effect from 25.01.2018 vide entry No. '195B' [Schedule II] to notification No. 1/2017- Central Tax (Rate), dated 28.06.2017.</p> <p>3. Fitment Committee examined the issue and does not recommend further reduction in the existing GST rate.</p>
22.	Refurbished engines [84]	28%	18%	<p>1. It has been argued that like a rate differential between new tyre (28%) and re-furbished tyres (18%), a differential rate may be prescribed for re-furbished engines.</p> <p>2. Refurbished engines cannot be treated on par with re-treated tyres for purpose of GST rate. The latter is a composite supply, the predominant element is the process of re-treading which is a supply of service. Rubber used for re-treading is an ancillary supply.</p> <p>3. Moreover, re-treaded tyres are classified under a separate Tariff heading [4012], but this is not the case with refurbished engines. Hence having a differential rate structure for refurbished engines would be difficult to implement.</p> <p>4. Fitment Committee examined the issue and does not recommend any change in the existing GST rate of refurbished engines.</p>
23.	Scientific and technical instruments, apparatus equipment (including computers) [Any Chapter]	Applicable rate	Nil	<p>1. End use-based exemptions are not desirable in the GST as they break the credit chain and are difficult to monitor</p> <p>2. Moreover, medical devices already attract concessional GST rate of 5%/12%.</p> <p>3. Specified list of drugs attract concessional rate of 5% GST rate, while others attract 12%.</p> <p>4. End use-based exemption on these goods will result in increase in cost of these items due to non-availability of credit to the manufacturers of these items.</p> <p>5. Fitment Committee examined the issue and does not recommend any change in the existing</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				GST rate.
24.	Electronic devices [85]	18%	Nil	<ol style="list-style-type: none"> 1. The request is for providing exemption from GST on electronic devices like tablets, laptops, desktop computers etc when used by students and teachers for education purposes. 2. These are value add products meant for consumption and hence are rightly standard rated. 3. No change proposed.
25.	Base Metals [Chapter 72 to 83]	18%	5%	<ol style="list-style-type: none"> 1. Base metals are mostly use as input /intermediate and user industry gets ITC in most cases. Reducing GST on base metal does not help the industry. In fact, it would create issues of inverted duty structure. Industrial items like metals should appropriately be standard rated. 2. No change suggested.
26.	Beekeeping equipment's [8436]	12%	Exempt or reduce GST rates up to 5% on the beekeeping equipment's, machineries and various other beekeeping facilities	<ol style="list-style-type: none"> 1. Beekeeping equipment's falling under HSN 8436 attract 12% GST rate vide entry no. '199' [Schedule II] to notification No. 1/2017-Central Tax (Rate), dated 28.06.2017. 2. End-use based exemption is prone to misuse and litigation. 3. Raw materials for these machineries such as iron steel, plastic, and other metals, in general, attract 18% GST. Reduction in GST on finished goods to 5% will deepen the duty inversion. 4. Exemption from GST rate will lead to cascading of input taxes. 5. Tax concession does not appear to be the right instrument to incentivize the activity. Instead, support through public expenditure/ direct subsidy may be a better approach. 6. Fitment Committee examined the issue and does not recommend any change in the existing

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				GST rate.
27.	Gems & Jewellery [71]	3%	1.25%	<ol style="list-style-type: none"> 1. Standard rate of GST is 18%, while the existing rate for these goods is already low at 3%. 2. The taxable value is high and reduction in GST rate will have revenue implications. 3. Fitment Committee examined the issue and does not recommend any change.
28.	Imports of Gold Dore [7108]	3%	<ol style="list-style-type: none"> 1. Nil IGST on import of gold dore; or 2. Lower IGST rate compared to Gold on imports; or 3. Reduced Assessable value (reduced by 5%) on imports or 	<ol style="list-style-type: none"> 1. Currently, basic customs duty differential of 0.6% has already been provided between gold (BCD @7.5%) and gold dore (BCD @6.9%) in favour of Gold dore in order to encourage domestic gold refining. 2. Credit of IGST paid on imported Gold dore is available to domestic gold refiners and this credit may be utilized to pay GST on domestic supply of Gold refined from Gold dore. 3. Fitment Committee examined the issue and does not recommend any change in the existing GST rate.
29.	Silk reeling Machinery [8445 40 40]	18%	5%	<ol style="list-style-type: none"> 1. Silk reeling machinery attract 18% GST rate vide entry no. '337' [Schedule III] to notification No. 1/2017- Central Tax (Rate), dated 28.06.2017. 2. Raw materials for these machineries such as

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>iron, steel, plastic, and other metals, in general, attract 18% GST. Reduction in GST to 5% will deepen the duty inversion.</p> <p>3. Lowering GST rate will result in accumulated ITC with associated carrying cost.</p> <p>4. Tax concession does not appear to be the right instrument to incentivize the activity. Instead, support through public expenditure/ direct subsidy may be a better approach.</p> <p>5. Fitment Committee examined the issue and does not recommend any change in the existing GST rate.</p>
30.	<p>Outboard Motors meant for marine fishing purpose</p> <p>[8407 21 00]</p>	18%/ 5%	5%	<p>1. Outboard Motors (8407 21 00) when used as a part of fishing vessels (HS Code 8902), attract 5% GST rate vide entry no. '252' [Schedule I] to notification No. 1/2017- Central Tax (Rate), dated 28.06.2017. General applicable rates on motors is 18%.</p> <p>2. Para-10 of Circular No. 52/26/2018-GST, dated 9-8-2018 has already clarified a similar issue.</p> <p>3. No further action.</p>
31.	<p>Extend exemption from compensation cess to CSD canteens on the same lines as is available from Central Tax, State Tax, Integrated Tax etc.</p>	As applicable	Nil	<p>1. The 15th GST Council Meeting held on 3rd June, 2017 while discussing the issue recommended extension of 50% concession from GST on supplies to CSD through a reimbursement mechanism (where CSD would get refund of 50% of GST under Section 55 of the CGST Act and the SGST Acts) but no concession was to be given from levy of Compensation Cess.</p> <p>2. Fitment Committee examined the issue and observed that it was conscious decision of the Council not to grant exemption from compensation cess to CSD canteens.</p> <p>3. No change recommended.</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	[Any Chapter]			
32.	Components used in LED Lighting products (LED Chips, El Capacitors, IC's, PCB's, Bridge Rectifier, SMD Resistors, SMD Diodes, Drum Inductor, Varistors, Silicone Sealant etc. [8541 / 8532 / 8542 / 8534 / 8541 / 8533 / 8541 / 8504 / 8533 / 3214]	18%	5%	<ol style="list-style-type: none"> 1. The concessional GST rate of 5% is mostly prescribed for sensitive items such as life-saving drugs, branded food grains, etc. The subject goods whereas are commercial items. 2. Insofar as duty inversion is concerned, as LEDs attract GST at the rate of 12%, the issue is under consideration of the Group of Ministers on rate rationalization.
33.	Braille Equipment Embossers and Braille Paper etc [chapter 84 or 90]	5%	Nil	<ol style="list-style-type: none"> 1. Braille related equipment and its parts have been provided the concessional GST rate of 5%. 2. Exempting these goods would block availment of ITC by manufacturers leading to higher costs for users. 3. No changed proposed.
34.	For clean energy	5% - 28%	Uniform GST slab @	<ol style="list-style-type: none"> 1. The GST rates on specified renewable energy equipment was increased from 5% to 12% as

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	transition technologies such as pump hydro storage, battery energy storages, green hydrogen, etc. [chapters 84, 85 or 94]		5% on the various technologies for next 10 year	per the recommendations of the recent 45 th GST Council, in order to remove inversion. 2. The inverted duty structure was leading to blocking of working capital for the domestic manufacturers of renewable energy equipment. 3. Thus, incentives other than GST rate concessions may be a better approach. 4. Fitment Committee examined the issue and does not recommend any change in the existing GST rate.
35.	CNG buses [8703]	28%	Waiver or reduction in GST rates for CNG and CNG buses	1. Buses in general attract a GST rate of 28%. However, buses for use in public transport which exclusively run on bio-fuels attract a GST rate of 18%. Further, electric buses attract a concessional GST rate of 5%. These are early days of e-vehicle and bio fuel vehicle. CNG buses are widely used and has scale of production. Therefore, rate reduction on parity with e-vehicle or otherwise is not desirable. 2. No change recommended.
36.	Parts of Electrical Vehicles [Any Chapter]	Applicable rates	5%	1. The original equipment manufacturer is eligible for refund of the ITC. 2. Many parts are common for electric vehicles (EV) and internal combustion engine vehicles. 3. Giving a concessional GST rate for parts of an EV may lead to misclassification, which would be difficult to monitor and enforce. 4. Fitment Committee examined the issue and does not recommend any change in the existing GST rate.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
37.	Poultry Feed Supplement [PFS]/ Meat Bone Meal [MBM] [2301]	5%	Request for retrospective GST exemption to PFS/MBM suppliers for the period from July 2017 to March 2019.	<ol style="list-style-type: none"> 1. <i>Vide</i> Circular No. 80/54/2018-GST dated 31st December, 2018, it was clarified that Fish Meal or Meat Cum Bone Meal [MBM] and other raw materials used as input for making cattle / poultry / aquatic feed, falling under heading 2301, attract GST at 5% under S. No. 103 of Notification No. 1/2017 – CT (Rate) dated 28.06.2017. 2. The issue of providing retrospective exemption to meat cum bone meal was deliberated at length in the 37th GST Council Meeting held on 20.09.2019 and the Council made a conscious recommendation to not provide retrospective exemption to such inputs of animal feed except to fish meal.
38.	UHT Milk [0401, 0402]	5%	0%	<ol style="list-style-type: none"> 1. There is a substantial value addition in manufacturing UHT milk and is sold at a higher price. 2. Exempting such products breaks ITC chain and leads to inversion. 3. The issue had been examined earlier in the 16th, 31st, 37th and 45th GST Council Meetings. No change was recommended by the Council. 4. Fitment Committee does not recommend any change.
39.	Marble & Granite [2515, 2516]	18%	5%	<ol style="list-style-type: none"> 1. The present GST rates on Marble and Granite blocks is at 12% while finished Marble and Granite slabs attract 18% rate. These rates were fixed, taking into consideration the pre-GST tax incidence. 2. The BCD on marble blocks and slabs is presently at 40%, while granite blocks and slabs attract 40% and 20% BCD respectively. There is already substantial difference in favour of domestic producers.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>3. The issue was also examined during 14th, 23th and 37th Meeting of GST Council and request for rate reduction was not agreed to.</p> <p>4. Fitment Committee examined the issue and does not recommend any change.</p>
40.	Bunker Fuel [2710]	5%	Exempt by Ministry of Shipping 1% by State of Kerala	<p>1. The request had been examined in 22nd, 31st and 45th GST Council Meeting.</p> <p>2. In 22nd Meeting, the GST rate on these goods was reduced from 18% to 5%. No further reduction was recommended in the 31st and 45th Meetings of the Council.</p> <p>3. Fitment Committee does not recommend any change.</p>
41.	Plastic products made from Waste plastic [Chapter 39]	18%	5%	<p>1. Input-origin based (recycled/ waste vs virgin plastic) differential GST rate on finished plastic material is difficult to implement.</p> <p>2. The issue was examined in 31st and 37th Meeting of GST Council and reduction to 5% was not agreed.</p> <p>3. Moreover, waste plastic scrap and parings has been rationalised to 18% w.e.f 1st October, 2021, as recommended by 45th GST Council Meeting. So, the input is also at 18% GST rate now.</p> <p>4. Fitment Committee does not recommend any change in the existing GST rate.</p>
42.	Paper moulded trays [4823]	12%	5%	<p>1. On recommendation of 37th GST Council meeting, such items made of leaves/flowers/bark have already been rationalised at 5% GST rate.</p> <p>2. The matter was examined in 37th GST Council meeting and no change was recommended.</p> <p>3. Lowering of GST on one item will lead to similar request on other items.</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>4. Further, multiple rates on similar items will lead to distortion.</p> <p>5. Fitment Committee does not recommend any change.</p>
43.	<p>Ceramic Tiles</p> <p>[HSN 6907] and</p> <p>Sanitary ware</p> <p>[6909]</p>	18%	12%	<p>1. At the time of GST roll out, Ceramic tiles attracted 28% GST.</p> <p>2. The GST rates on said goods have already been reduced to 18% in 23rd GST Council meeting</p> <p>3. Similar articles used in construction also attract 18% GST rate.</p> <p>4. The matter was examined in 37th GST Council meeting and no change was recommended.</p> <p>5. No change recommended.</p>
44.	<p>Tractor specific input parts</p> <p>[8708]</p>	18%	12%	<p>1. Tractors attract a concessional GST of 12%, while specified parts of tractors attract GST at a rate of 18%.</p> <p>2. Refund of accumulated ITC is available to tractor manufacturers.</p> <p>3. The issue has been examined in the GST Council meeting..... and a conscious decision was taken to prescribe 18% on specified /identifiable parts of tractors. Other automobile parts attract GST at the rate of 28%.</p> <p>4. Reduction in GST rate on such unspecified parts of tractors will result in shifting of inverted duty structure upstream as the inputs to these parts like metals, etc. attract a GST rate of 18%.</p> <p>5. The Fitment Committee does not recommend</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				any change.
45.	Impella Heart Pump Therapy (lifesaving medical device) [9018]	12%	Exempt	<ol style="list-style-type: none"> 1. Present GST rate on most surgical and medical goods falling under 9018, 9019, 9021 and 9022 is 12%. 2. The rate of 12% is revenue neutral rate considering 6% Excise Duty and 5-12% VAT in pre-GST era. 3. 12% GST rate is concessional GST rate given that the maximum number of goods falls under 18% bracket. 4. 5% GST would put domestic industry at disadvantage on account of deepening of inversion. 5. Fitment Committee examined the issue and does not recommend any change in the existing GST rate.
46.	Oilcake and oil meals extracted from oilseeds of sunflower / soya / cotton / groundnut / rapeseed, rice bran. Maize etc. [2304, 2305 & 2306]	5%	0%	<ol style="list-style-type: none"> 1. Poultry, cattle and aquatic feed had been exempted by the GST Council. However, as discussed in the GST Council's 31st and 37th meetings, inputs to animal feed are not exempt. 2. Oilseeds are used to extract edible vegetable oils and oil cakes are a residue of the process. 3. Oilseeds attract 5% GST rate and are used as inputs to extract edible vegetable oils. 4. Oil cake is a by-product of oil extraction and is generally used as an input in preparation of animal feed. Exemption to oil cake will lead to inverted duty structure where oil seed will be at 5% and oil meal will be exempt. The issue of exemption to oil meal and oilcakes has been discussed earlier in the 28th meeting held on 21.07.2018 and in the 31st meeting held on 22nd Dec 2018; however, the Council did not

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>recommend the proposal.</p> <p>5. Fitment Committee examined the issue and does not recommend any change in the existing GST rate.</p>
47.	<p>Wind Projects</p> <p>[84, 85 or 94]</p>	Applicable rates	Clarification	<p>1. Clarification has been sought on the issue whether wind turbine is to be treated as movable or immovable property for taxation.</p> <p>2. The issue regarding the applicable GST rate on renewable energy projects including wind project has been clarified in past.</p> <p>3. For a composite supply contract, the ratio of 70:30 shall be applicable and there is no ambiguity about the same.</p> <p>4. Accordingly, there is no need to issue any clarification.</p> <p>5. Fitment Committee examined the issue and does not recommend any change in the status quo.</p>
48.	<p>Khadi Products</p> <p>[Any Chapter]</p>	Nil/5%	Exemption	<p>1. Handloom fabrics already attract lowest GST rate of 5% or nil rate,</p> <p>2. The Council, in its meeting on 9th September, 2017, recommended Nil GST rate on Khadi fabric under chapters 50 to 55, sold through Khadi and Village Industries Commission (KVIC) and KVIC certified institutions/outlets.</p> <p>3. Fitment does not propose any further change.</p>
49.	Coal supplied to	5% GST+ Rs. 400/MT	1. Exemption on w.e.f.	1. GST rates including compensation cess have been prescribed to retain the incidence of the

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	Thermal Power Plants which would comply with the new emission norms of MoEF&CC by installing Flue Gas De-sulphurisation (FGD) and other additional equipment [2701]	compensation cess	1.7.2022. 2. Compensation cess on <i>ad-valorem</i> basis	tax as it was in pre-GST regime. 2. The suggestion of granting end use-based exemption to non-polluting plants may not be feasible as it has been a consistent view of the GST Council that end use based are difficult to implement and should be restricted to limited items as far as possible. 3. Pre-GST, coal, including lignite, attracted Clean Environment Cess at the rate of Rs. 400 per MT. 4. 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 the Clean Energy Cess, which was being imposed in Pre-GST. 5. Fitment Committee does not recommend any change.
50.	Clay Bricks [6904] Fly Ash brick [6815]	6% without ITC, 12% with ITC	1. Threshold limit of applicability is annual turnover of Rs. 20 Lakh for a brick-field, significantly down from existing Rs. 1.5 Crore 2. Tax rate has been proposed @6%	1. As recommended by the GST Council in its 45th Meeting, Fly ash bricks, fly ash aggregate (>90% fly ash content) and fly ash blocks attracts 6% GST without ITC and 12% with ITC, with effect from 1st April, 2022. 2. The items attracted 5% GST prior to the said decision. 3. Fitment Committee does not recommend any change.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
			instead 1% without Input Tax Credit facility and @12% instead of existing 5% with ITC facility	
51.	Pulp products [Any chapter]	Applicable rate	Reduction of GST on sugarcane bagasse pulp-based products	<ol style="list-style-type: none"> 1. Bagasse currently attracts GST at rate of 5%. 2. GST rate concession based on input origin criteria may be difficult to implement and lead to mis-classification vis-à-vis similar products. 3. Instead of GST concession, direct benefit budgetary support may be a better approach. 4. Fitment Committee does not recommend any change.
52.	MSMEs products (Handmade matches, carton box, branded edible oil, branded rice, pulses, food served in hotels, textiles, engineering job works, Chikki)	As applicable	Nil / 5%	<ol style="list-style-type: none"> 1. The GST rate on matches (all kinds) and carton box has been prescribed by the GST Council in its 39th and 45th Meetings. To avoid disputes all kind of matches have been placed under 12% slab. 2. Fitment Committee does not recommend any change.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	[Any Chapter]			
53.	‘Carbonated Beverages of Fruit Drink’ or ‘Carbonated Beverages with Fruit Juice’ [2202]	28% + 12% Cess	12%	<ol style="list-style-type: none"> 1. The revised rate on these goods was prescribed based on the recommendations of the GST Council in its 45th Meeting, wherein Council had taken into account all factors. 2. No change recommended.
54.	Lime blended indigenous tobacco [Chapter 24]	28% GST plus compensation cess as applicable	Reduction in rate	<ol style="list-style-type: none"> 1. It is felt that there is no merit for reduction of GST on such goods considering the nature thereof and general principles of rate slab in GST.
55.	Items which originally attracted 28% GST [Any Chapter]	Varied	Compensation cess on the differential rate from 28% so that the rate of 28% is applied.	<ol style="list-style-type: none"> 1. 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. 2. GoM is examining the issue of rate slab. 3. However, levy of Compensation cess at different rates (difference between applicable GST rate and 28%) will go against the principle on which these items were brought out of 28% rate slab and also complicate the rate structure.
56.	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.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>3. Further, burden of tax is not on farmers as tax on tobacco leave is 5% under RCM.</p> <p>4. No change proposed.</p>
57.	Raw silk & other silk weaving materials [50]	5%/Nil	Nil	1. The issue is under consideration of the Group of Ministers on rate rationalization.
58.	Handloom products [Any Chapter]	5%	Nil	1. The issue is under consideration of the Group of Ministers on rate rationalization.
59.	Tobacco Products [24]	<p><u>GST rate -</u> 28% on tobacco products.</p> <p><u>Compensation Cess:</u></p> <p>‘Hookah’ or ‘gudaku’ tobacco bearing a brand name (HSN 2403</p>	<p>Exempt compensation cess on supply made to the merchant exporter;</p> <p>or</p> <p>Reduce rate of compensation cess to 0.1% on supply made</p>	<p>1. The benefit of reduced rate of 0.05% of central tax available under the Notification No 40/2017 CT (Rate) dated 23/10/2017, and of 0.1% integrated tax available under Notification No 41/2017 IGST (Rate) dated 23/10/2017, does not extend to compensation cess. This has been a conscious decision of the Council.</p> <p>2. Fitment Committee does not recommend any change.</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
		11 10): 72% Chewing tobacco (without lime tube) (HSN 2403 99 10): 160%	to the merchant exporter at par with rate of IGST on such supply	
60.	AC Sheets [6811]	18%	5% or 12%	<ol style="list-style-type: none"> 1. Asbestos Cement (AC) sheet is used for roofing. 2. Main inputs include chrysotile asbestos (GST rate 5%, mainly imported) and cement (GST rate 28%). 3. The item currently attracts the standard GST rate, i.e. 18%. In the 45th meeting the GST rate on bricks has also be revised to 12%. Threshold for Bricks has already been reduced to Rs 20 lakh. 4. Hence, in the circumstances not much justification for reduction of GST on AC sheet.
61.	Printing and paper products [4819]	18%	12%	<ol style="list-style-type: none"> 1. The GST rates on cartons, boxes, paper products were rationalized based on recommendations of 45th GST Council Meeting, w.e.f. 1st October, 2021. 2. Fitment Committee does not recommend any change.
62.	Input Tax on Raw Materials used for production of Power Tillers / Power	12% - 28%	12%	<ol style="list-style-type: none"> 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. 2. Lowering GST rate will result in accumulated ITC with associated carrying cost.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	Weeders / Power Reapers			<p>3. 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>4. Instead of tax policy, support through public expenditure, especially in the form of direct subsidy to the beneficiaries could be the most effective policy option to provide assistance and relief in the instant case.</p> <p>5. The request had been considered in the 37th GST Council Meeting and had not been recommended.</p> <p>6. Fitment Committee examined the issue and does not recommend any change in the existing GST rate.</p>
63.	Power Tillers (84328090) / Power Weeders [84328020] / Power Reapers [84321090]	12%	5%	
64.	Spare Parts / Components / Engines of Power Tillers / Power Weeders / Power Reapers	12% - 28%	12%	
65.	Transmission shafts [8483]	18%	12%	
66.	Components / Parts of agricultural machinery	18%	12%	
67.	Electric Motors [8501]	18%	12%	
68.	Engines [8407 &	28%	12%	

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	8408]			
69.	Spare parts of Petrol and Diesel engines [8409]	28%	12%	
70.	Brush Cutters and Chainsaws [8467]	18%	12%	
71.	Roll Over Protective Structure – ROPS [8708 99 00] used in Agricultural Tractor	28%	Exemption	
72.	Seat With a seat belt [9401 20 00]	18%	Exemption	
73.	Rock Phosphate [2510] and Sulphuric acid, used for the manufacture of Single super Phosphate (SSP) [2807 00 10]	5%/18%	Nil/5%	<ol style="list-style-type: none"> 1. Rock phosphate is already at 5%. 2. Sulphuric acid is used for a very large number of purposes. GST reduction for actual use on fertilizers may be difficult to administer. Further, ITC refund is available on Sulphuric acid used as input for SSP. 3. Fitment Committee examined the issue and does not recommend any change in the existing GST rate.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
74.	GST Concession on Motor Vehicles purchased by all categories of Divyangjan [8703]	18%	The Committee recommends that GST concession certificate for purchase of motor vehicle as available presently for persons with orthopaedic disability and their kith and kin should be extended to all categories of persons with benchmark disabilities mentioned in RPwD Act, 2016 and their kith and kin.	<ol style="list-style-type: none"> 1. Presently the GST concession for purchase of vehicles is available only to orthopedically disabled persons. 2. The present request is for extending the benefits for GST concession certificate to deserving categories of Divyangjan included under Rights of Persons with Disabilities Act, 2016 for the purpose of motor vehicle as available to orthopedically disabled. 3. Fitment Committee examined the issue. It is felt that while there is merit in the proposal. GST rate tweaking may not be an appropriate method of relief as GST rate structure revision based on end use creates distortion. The concession rate for orthopedically disabled person has been continued from pre-GST regime. 4. Fitment Committee is of the view that benefit/concession to Divyangen on purchase of vehicle should be in the form of reimbursement of GST already paid, which should be done through direct transfer through the budgetary route by the DEPwD. Once a decision is taken to implement the scheme by DEPwD, through direct transfers, it for the DEPwD to decide as to which category of PwDs need to be covered under the scheme.
75.	Human Papillomavirus (HPV) Vaccine [Chapter 30]		Clarity on the current applicable GST rate on HPV Vaccine.	<ol style="list-style-type: none"> 1. Entry at S. No. 174 of Schedule I (5% GST) states description as – Animal or Human Blood vaccines. Apart from this, certain vaccines are specified in List 1 which attracts 5% GST under S. No. 180. 2. In Central Excise era, goods of description ‘Vaccines specified under the National Immunisation program’ attracted Nil C.Excise duty. However, the equivalent phrase at time of GST was changed to ‘Animal or Human blood

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				vaccines. 3. Fitment Committee recommends that the issue may be deferred and a reference may be made to the Health Ministry for their comments.
76.	Malt based Non-Alcoholic beverages [Fruit Beer] [2202 91 00]	18%	12%	1. Fruit beer is a growing product. 2. Consumer of these products could easily afford the tax. 3. Even bottled water is at 18%. 4. Aerated water attracts 28% GST plus 12% Compensation Cess (total 40%). 5. Hence request does not merit consideration.
77.	Helicopter [8802]	1. 28% + 3% cess for personal use 2. 5% for use other than personal use.	Uniform rate of 5% on helicopter purchases irrespective of type of category of operation	1. Helicopter, other than for private use, attract GST at the rate of 5%. 2. In pre-GST regime, the exemption from Customs/additional duty of Customs was restricted only to aircraft/helicopters imported for scheduled/non-scheduled operations. There was no exemption for helicopters imported for private use. 3. Aircrafts /helicopters for private use are purchased/imported by high-net-worth individuals who can afford to pay high GST on the same. 4. No change proposed.
78.	Aviation Gasoline	18%	Nil	1. AvGas is majorly used in the training aircrafts. In the 23rd GST Council meeting, the GST rate on AvGas was reduced from 28% to 18%.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	[27101250]			<p>2. At present, the flying training organizations are also exempt from paying GST on flying training which is classified under Heading 9992 - Services provided by educational institution to its students which is exempt under notification 12 of Central Tax (Rate).</p> <p>3. Also, AvGas forms only a part of the cost of providing flying training and is not the major expense.</p> <p>4. No change proposed.</p>
79.	Aircraft parts [8807]	Applicable Rate	Uniform rate of 5% IGST on all parts that can be used in aircraft, aircraft engines and APU irrespective of the chapter heading it is classifiable under	<p>1. As recommended by the GST Council in its 23rd Meeting dated 10.11.2017, 5% IGST has been prescribed for aircraft engines, tyres, seats and other parts which are used exclusively in aircrafts. Specific parts [for aircraft] falling under heading 8803 (now 8807) also attract 5% GST. These constitute majority of parts.</p> <p>2. However, other parts including consumable items, attract the applicable rate of IGST (12% - 28%)</p> <p>3. Further, 'Parts, testing equipment, tools and tool-kits for MRO activities for aircrafts' attract 'Nil' BCD when imported by MRO operators registered with the DGCA. This exemption from BCD is available on all parts and equipment (whether designed for exclusive use with aircrafts or otherwise). However, IGST is payable on such imports at the applicable rate as mentioned in para (i) above.</p> <p>4. The present request is for providing a uniform rate of GST @ 5% for all parts of aircrafts, irrespective of the fact that such parts may not be exclusive to aircrafts alone.</p> <p>5. Having a general exemption to all such parts is prone to misuse and accordingly Ministry of Civil Aviation (MoCA) was requested to provide a list of parts on which the GST</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>concession is required and which are not presently made in India and not likely to be made in near future.</p> <p>6. MoCA has provided a long list (thousands of items) including items of general use. A number of these items may be manufactured in India or have a scope to be manufactured in India.</p> <p>7. Providing a lower rate of GST will put domestic manufacturers of such parts at a disadvantage as such manufacturers will face accumulation in ITC.</p> <p>8. No change proposed.</p>
80.	Waste Batteries [8548 or 8549]	18%	5%	<p>1. Waste Batteries are classified under HS 8549 and attracts 18% GST (S.No. 398).</p> <p>2. Waste batteries are recycled and useful materials are removed which then used as raw material.</p> <p>3. These items are not finished products rather inputs for other industry.</p> <p>4. Any reduction in GST rate of waste batteries will lead to request for reducing GST rate on all scrap.</p> <p>5. Fitment Committee has been of the view that scrap which presently attract lower rate should also move to standard rate. In the 45th GST Council meeting plastic scrap was moved from 5% to 18% in order to sustain parity in GST rates among all scrap and avoid issues of misclassification.</p>
81.	Left Ventricular Assist Device (LVAD) (Artificial Heart Pump)	12%	Nil	<p>1. Medical devices attract GST at the rate of 12%. This request will lead to similar requests in respect of other similarly placed medical devices.</p> <p>2. Additionally, the 12% GST rate is ideal considering minimal inversion with concessional rate compared to the standard</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	[Chapter 90]			18%. 3. Further, in respect of imports for personal use, <i>ad hoc</i> exemption route is available. 4. No change recommended
82.	Printed Books [4901, 4903,4820]	NIL/ 5%/ 12%/ 18%	1. NIL rate on all educational books, as per school, college & university curriculum, including braille books 2. NIL rate on Children's picture, drawing or colouring books 3. Uniform rate of 5% on all other printed books.	1. Currently, GST rate structure on printed books is as follows: (a) NIL rate on printed books, including braille books (S.No. 119 of Schedule-I of Notn 2/2017) (b) NIL rate on children's picture, drawing or colouring books (S.No. 121 of Schedule-I of Notn 2/2017) (c) 12% GST rate on Exercise book, graph book, & laboratory note book and notebooks (S.No. 123 of Schedule-II of Notn 1/2017) (d) 5% GST rate on Brochures, leaflets and similar printed matter, whether or not in single sheets (S.No. 201 of Schedule-I of Notn 1/2017) (e) 5% GST rate on e-books for which printed version is available in the market (S.No. 22(i) of Notn 11/2017) (f) 18% GST on e-books for which printed version is not available in the market (e-books are covered under OIADR attracting 18% GST rate) 2. Fitment Committee is of the view that this rate structure has evolved over a time and may continue and could be revisited at the time of general review of GST rate structure.
83.	Dairy products like ghee, butter [0405] and flavoured milk [2202]	12%	5% Issuance of clarification	1. Ghee and butter are at 12% as per the pre-GST tax incidence and most of the other similar value added processed food items also attract 12% GST rate [7.96% weighted average VAT rate and 2.5% CST, Octroi etc.]

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	99 30]		for appropriately classifying the flavoured milk under chapter 0402	<p>2. Desi ghee and butter are sold in significant quantity by the organized sector also such as Amul, Mother Dairy etc.</p> <p>3. The small manufacturers or suppliers of such products could avail threshold exemption and composition scheme.</p> <p>4. With regards to flavoured milk, it is appropriately classifiable under HS 2202 99 30 which contains '<i>Beverages containing milk</i>'. As per HS Explanatory Notes, the heading 0402 excludes <i>Beverages consisting of milk flavoured with cocoa or other substances (heading 22.02)</i>. The applicable GST rate on such flavoured milk is 12%.</p> <p>5. Further, the flavoured milk is already at a concessional GST rate of 12% at par with other similar processed and value added nutritional products such as soya milk drinks, fruit juices and branded coconut water under chapter 22.</p> <p>6. GST Council in its 25th meeting held on 18.01.2018, 28th meeting held on 21.07.2018, 31st meeting held on 22.12.2018 and 37th meeting held on 20.09.2019 has examined the proposal for reducing the GST rate on such products to 5% and has not recommended the same.</p> <p>7. Fitment Committee does not recommend any change.</p>
84.	Sports Goods related to the discipline of shooting sports [9302, 9303,	18% / 28%	Reduce GST on Air Rifles / Air Pistols of .177 caliber to 0% and other articles to 5%	<p>1. The 14th GST Council has decided the rates of GST on goods under chapter 93 at 18% and 28%.</p> <p>2. Subsequently, the review of items under the 28% GST slab was done in the 23rd GST Council meeting. After this review, the Council again recommended against removing the items falling under chapter 93 that attract 28% GST rate.</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	9304, 9306]			<p>3. GST rate on raw materials / inputs / services required for manufacture of Air Rifles / Air Pistols is mainly at 18%.</p> <p>4. Reducing the GST rate to 0% would lead to an inverted duty structure without availability of refund (since refund of the unutilized input tax credit cannot be claimed for output supplies that are nil rated.)</p> <p>5. No change proposed</p>
85.	COVID-19 Genome Sequencing Test kits [3822]	12%	5% (imported by Central or State Government)	<p>1. The issue of GST concession to Genome sequencing machines and kits was examined by the GoM on COVID concessions set up after 43rd GSTC Meeting, as well as during the 44th meeting of the GST Council.</p> <p>2. No change was recommended in the GST rate of these goods by the GoM and subsequently, by the GST Council.</p> <p>3. No change proposed.</p>
86.	COVID-19 medicines – Itolizumab, Cytosorb, Posacanazole [Chapter 30]	5%, 12%	Nil	<p>1. The exemption to COVID relief items including medicines had been examined and concessional rate was provided up to a limited period (last exemption expired on 31.12.2021), on recommendations of the GST Council in 43rd and 44th Meetings.</p> <p>2. Accordingly, no change proposed.</p>
87.	Areca nut [0802]	5%	2% Or Reduction in GST rate	<p>1. Dried Areca nuts, whether or not shelled or peeled already attract the concessional GST rate of 5% and any further reduction is not merited.</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
88.	Copper sulphate [2833 25 00]	18%	5%	<ol style="list-style-type: none"> 1. Copper sulphate is <i>inter alia</i> used in agricultural fungicide [Bordeaux mixture]. It attracts GST at 18%. Fertilizers attract GST at rate of 5%. 2. Copper sulphate has other uses as well. End-use based concession is difficult to implement and prone to misuse. 3. No change recommended.
89.	Plastic scrap [Chapter 39]	18%	5%	<ol style="list-style-type: none"> 1. It has been requested to reduce the GST on scrap plastic material from 18 to 5%, and that GST should also be reduced on recycled plastics to 5% for bettering the lives and livelihood waste-pickers, and effective 2. The GST rate on plastic scrap was rationalized from 5% to 18% on recommendations of the 45th GST Council Meeting. 3. Fitment Committee does not recommend any change.
90.	Pharmaceuticals [Chapter 30]	12%/ (5% on specified medicines)	5%	<ol style="list-style-type: none"> 1. Most medicines attract concessional GST rate of 12% (apart from certain specified life-saving drugs which attract 5% or Nil GST). 2. The inputs to pharma sector are chemicals mostly at 18% GST. General reduction of GST on pharma sector to 5% will accentuate inverted duty structure and distortion in GST rate chain, which may not be desirable.
91.	Household water pumps [8413]	12%	5%	<ol style="list-style-type: none"> 1. Household pumps are already at concessional rate of 12%. Further reduction may cause inverted duty structure. Fitment Committee examined the issues and does not recommend any change.
92.	Supplies to defence research	5% conditional	5%	<ol style="list-style-type: none"> 1. Supplies to defence research institutes attract concessional rate of 5%, subject to production of requisite certificate, to prevent misuse.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments						
	institutes [Any Chapter]			2. No change recommended						
93.	Animal shoe nail [7317]	12%	Nil	1. Animal shoe nails are already at concessional rate of 12%. Further reduction may cause inverted duty structure. 2. No change recommended.						
94.	Parts of <i>Chara</i> cutting machine [8436 99 00]	12%	Clarification that Parts are covered under Entry 199 of Schedule II	<div>1. The entry at S. No. 199 of Schedule II of notification No. 1/2017-Central Tax (Rate) prescribing GST rate of 12% on specified goods, currently reads as follows-</div> <table><tr><th>S. No.</th><th>Chapter / heading/ sub-heading/ tariff item</th><th>Description</th></tr><tr><td>199.</td><td>8436</td><td>Other agricultural, horticultural, forestry, poultry keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.</td></tr></table> <div>2. The above goods attract GST at rate of 12%. 3. The reference mentioned that however, parts of these goods of heading 8436, falling under tariff items 8436 91 00 and 8436 99 00, attract GST rate of 18% under residual entry 453 of Schedule III (because ‘parts’ are not mentioned specifically in description column of the entry). 4. In entry No. 199 of Schedule-II, the CTH entry mentioned heading [8436] and description entry covers the complete description of</div>	S. No.	Chapter / heading/ sub-heading/ tariff item	Description	199.	8436	Other agricultural, horticultural, forestry, poultry keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.
S. No.	Chapter / heading/ sub-heading/ tariff item	Description								
199.	8436	Other agricultural, horticultural, forestry, poultry keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.								

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>Customs Tariff heading 8436.</p> <p>5. Parts of machines under heading 8436 are covered under tariff item 8436 91 00 and 8436 99 00, even though the word 'parts' is not specifically mentioned in tariff heading description of 8436.</p> <p>6. It is a settled position that in this situation, the GST entry covers all tariff items falling under that heading (if, the neither heading is covered under in an entry), even if its description of tariff item is not specifically mentioned in the tariff heading description.</p> <p>7. In view of the above, it is clear that 'Parts' of machine under heading 8436 are covered under entry 199.</p> <p>8. Para-9 Circular 113/32/2019 dated 11th October, 2019 clarifies a similar issue. Another clarification thus does not appear necessary.</p> <p>9. Fitment Committee examined the issue and does not recommend any change.</p>
95.	<p>Milling Machines (Grain feeders, Grain Discharger, Bins for grains storage, Loaders & Hoppers)</p> <p>[8428]</p>	18%	<p>Issue clarification as to whether the following machines "Grain feeders, Grain Discharger, Bins for grains storage, Loaders & Hoppers" are classifiable under CTH 8437 and not CTH 8428</p>	<p>1. Legal judgements have classified machines used in the grain milling industry under HSN 8428 or 8437 depending upon the facts of particular cases in question.</p> <p>2. Machinery part of general use, which gets classified in a heading other than 8437, in terms of Section Note and Chapter Notes to HSN, attract GST as applicable to the respective heading such as 8428.</p> <p>3. While, machinery parts that are suitable for use solely or principally with 'Grain Milling Machines', as classifiable under heading 8437 as per Note 2 (b) or Note 4 to Section XVI attract 5% GST rate specified under Sr. No. 233 of Schedule I of Notification 1/2017 Central Tax (Rate) read with respective State Tax (Rate).</p> <p>4. As such, classification can be done according to the facts of the particular case based on legal interpretation of section notes and chapter notes.</p> <p>5. Hence, general clarification may not be needed in this case as each case has to be examined on its own merit.</p> <p>6. Fitment Committee examined the issue and does not recommend any change in the status quo.</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
96.	Mixtures of Micro Nutrient fertilizers [28 or 38]	18%	5% (same as micro nutrient fertilizers)	<ol style="list-style-type: none"> 1. 'Micronutrients, which are covered under serial number 1(f) [1(g)]144 of Schedule 1, Part (A) of the Fertilizer Control Order, 1985 and are manufactured by the manufacturers which are registered under the Fertilizer Control Order, 1985' under Chapter 28 or 38, attract GST rate of 12% [S. No. 56 of Schedule-II]. 2. The goods to which exemption is available are clearly specified as mentioned above. 3. Fitment Committee examined the issue and does not recommend any change.
97.	Scrap [7204, 7404, 7503, 7802, 7902, 8549]	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. The Fitment Committee had earlier observed that Reverse Charge Mechanism (RCM) on subsequent stages (after the first stage) is not advisable as it breaks the ITC chain. 4. The GST Council in its 45th Meeting had directed that this issue may be examined further, especially with reference to bringing the goods under RCM. 5. The matter was discussed in the Fitment Committee and it was observed that bringing the items under RCM may not address the issue and may actually further distortion by breaking the supply chain trail in GST. Further, reverse charge is not a measure that could be applied after the first stage of supply chain. In scrap the supply chain may have many constituents and hence RCM is not workable. 6. Fitment Committee examined the issue and does not recommend any change.
98.	Tobacco supplied for manufacture of	28% under forward charge	28% under Reverse charge	<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.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	Smokeless Tobacco product [HS 2403]			<p>2. Unmanufactured tobacco is produced from such tobacco leaves, which is further used to produce smokeless and smoking tobacco.</p> <p>3. Moreover, reverse charge can only be applied at the first stage. After that, the chain has to be maintained.</p> <p>4. No change proposed.</p>
99.	Human Blood Collection Bags [9018]	12%	Nil (Inclusion in exempt entry 'Human blood and its components')	<p>1. Exemption is available to '<i>Human Blood and its components</i>' falling under Heading 3002 vide entry at S. No. 106 of notification No. 2/2017-Central Tax (Rate).</p> <p>2. The term components of Human blood have not been specifically defined but as per open-source information blood has four major components namely plasma, red blood cells, white blood cells, and platelets. The same are exempted from GST.</p> <p>3. As per Heading note to heading 3002, human blood in sealed ampoules is included in the heading and should attract nil GST rate.</p> <p>4. Blood collection bags are designed with collection, storage and processing of whole blood and its components. They are made from high molecular weight PVC and processes are done to sterilize the same.</p> <p>5. The blood collection bag includes a secondary packaging made of laminated polyester/ aluminium /polyethylene, tubing, needle, needle injury protector, outer pouch for diverting few initial 10-30 ml of blood etc. As a complete equipment with above accessories, this would fall under Heading 9018 and attract GST rate of 12%.</p> <p>6. The blood collection bags are sold separately and therefore would be liable to a GST rate of 12%. However, if blood collection bags are supplied with Human blood, then it would take</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				the character of a packing material and will be eligible for the exemption to Human blood and its components. 7. No change proposed.
100.	Eco friendly cremation furnace [8417 80 90]	18%	Special GST rate with ITC or 5%	1. Concessional rate of 5% was notified for Gas/Electric/other furnaces for crematorium, for limited period up to 30 Sep, 2021 vide notification 5/2021- CT® dated 14 June, 2021, during the special circumstances posed by the second wave of COVID-19 pandemic. 2. It is stated in representation that this type of furnace uses less wood and produces less smoke. 3. As most inputs and input services would attract 18%, reducing the rate on finished item would cause distortion and inverted duty structure. 4. No change proposed.
101.	Marble / Granite stone [2515, 2516]	18%	5%	1. The GST rate on marble, travertine, granite stones/ slabs and blocks has been discussed on number of occasions in the Council, especially in 23 rd and 31 st Meetings. 2. Crude or roughly trimmed marble and granite attract GST at rate 5%, blocks are at 12% while other forms of marble and granite attract GST @ 18%. 3. Thus, there is graded duty rate on various forms of marble and granite, recommended by the Council after due deliberation. 4. No change proposed.
102.	Photo frames, metal deities, wooden furniture, articles of	Applicable rate	5% /Nil	1. Request is made on grounds that these are used as inputs for export goods. 2. For items used as inputs in finished export products, the refund mechanism is already available.

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	natural fibre [Any chapter]			3. End use based monitoring on inputs (for export products or otherwise) will be difficult to implement and prone to evasion. 8. No change proposed.
103.	Retro Compressed Natural Gas (CNG) kits [8409, 8708]	28%	5%	1. CNG Kits are generally classified under HSN 8409 as part of engine or 8708 as parts of motor vehicles and attract a GST rate of 28%. 2. Reducing the GST rate to 5% would create an inverted duty structure leading to blocking of working capital. 3. Therefore, the GST rate may be kept unchanged at 28% for CNG kits. 4. No change proposed.
104.	MSME goods [Any Chapter]	Applicable rate	Nil for a period of 12 months.	1. End-use or source-based blanket exemption like supplies of MSME goods is difficult to implement and prone to evasion. 2. Direct budgetary support instead of tax exemption may be a better policy tool to incentivise and support MSMEs. 3. Fitment Committee does not propose any change.
105.	Fuel i.e. Ethanol (E100) and biodiesel (B100) [2207, 3806]	18% / 12%	5%	1. The GST rate on ethanol/ biodiesel is five per cent when these are used for blending with petrol and diesel. However, Excise Duty is paid on Petrol and Diesel before such blending takes place. 2. Currently, Ethanol (E100) is taxed at 18% GST and Biodiesel (B100) at 12% GST, which is on a lower side as compared to Excise duty on Petrol and Diesel. Thus, these products are already at a concessional rate of GST and further reduction will have a huge revenue implication. 3. At present, E100 and B100 fuels are marketed

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				in small quantities. 4. No change proposed.
106.	Millet Based health mix powder –reg.	18%	5%	1. The item is a processed food product. Most other similar edible products also attract 18% GST. 2. No change proposed.
107.	All bakery products manufactured and sold by MSME industry including, but not limited to, puffs, nankhatai, muffins cakes, cookies, pastry, khara products etc. in addition to Rusks, Toasted Bread and Similar Toasted products [1905]	5%, /18%	5%	1. At present, <i>Rusks, toasted bread and similar toasted products</i> , falling under HS 1905 40 00, attract GST @5%. 2. Bakery products like Pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products [other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products] falling under HS 1905 attract GST@18%. 3. Small manufacturer/traders belonging to MSME sector have the option to avail threshold exemption and composition scheme. 4. Pre-GST incidence on most of these additional bakery products on which rate reduction has been desired was 18% or more. 5. Providing source-based exemption to MSME sector for specific products like bakery products will be difficult to monitor and cause distortion. 6. No change proposed.
108.	Handlooms [Chapters 50 to 63]	5%	Nil	1. GST rates on handloom textiles have been fixed on the basis of pre-GST incidence on these goods. All these goods attract the lowest GST rate of 5%. The issue of reduction of GST Rate on Handlooms was placed before the Council in its 21st meeting dated 9th

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>September, 2017 and 28th meeting dated 21st July, 2018. The Council did not recommend any change in rates.</p> <p>2. Further to promote handlooms, exemption on khadi yarn and khadi fabrics sold by outlets of KVIC has been exempted from GST.</p> <p>3. Putting all the requested goods at Nil rate will break the input tax credit chain and put domestic manufacturers at a disadvantage vis-a-vis imports of these goods.</p> <p>4. Moreover, the threshold exemption for small taxpayers has been increased to Rs. 40 lacs per annum and the limit for availing composition scheme has also been increased to Rs. 1.5 crores per annum to provide relief to small taxpayers like the weavers in handloom sector.</p>
109.	Purchases made from subsidiary Central Police canteens [Any Chapter]	As applicable	Nil	<p>1. The GST Council in its 15th Meeting agreed to limit the benefit of 50% exemption from GST to CSD canteens only.</p> <p>2. Thereafter, the request for GST exemption to Central Police Canteens were discussed during the 25th, 28th and 37th meeting of the GST Council. GST Council did not agree to the request on the grounds if such concession are granted to Central Armed Police Forces then similarly placed organisations at the State level may also need the same treatment. This would have large revenue implications.</p> <p>3. No change proposed.</p>
110.	Goods supplied by Tibetan Refugees Market Sweater Sellers [Any	As applicable	Nil	<p>1. Specific market based GST Rate exemptions are not desirable as they might lead to tax-evasion and would also block the Input Tax Credit leading to higher input cost.</p> <p>2. Moreover, under the threshold exemption, any person having turnover of less than Rs 40 lacs a year in goods is exempt from paying GST on their supplies. In this case, suppliers may</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
	Chapter]			largely be falling below the threshold. 3. No change proposed.
111.	<i>Beedis</i> [2403 19 21 and 2403 19 29]	28%	Rate reduction	<p>1. GST Rate on Bidi has been discussed at length in the 15th GST Council meeting wherein after much deliberation, the then Hon'ble Chairperson suggested that tendu leaves could be taxed at the rate of 18% under reverse charge and bidi could be taxed at the rate of 28%. The Council agreed to this suggestion.</p> <p>2. GST rate of 28% on Bidis was fixed taking into account the fact that the total tax incidence on Bidi was 25.68% (Central Excise duty - 3.72%; Weighted average VAT rate - 19.46%; CST, Octroi, etc - 2.5%).</p> <p>3. Bidis are demerit goods, and there is no justification for having GST rate lower than pre-GST tax incidence on them.</p> <p>4. 28% with no cess is the lowest rate for any tobacco product.</p> <p>5. The request to reduce rate on Bidi from 28% to 18% has been examined by the GST Council meetings (25th and 31st meeting) and was not accepted.</p> <p>3. Any rate reduction will have significant revenue implication.</p> <p>4. No change proposed.</p>
112.	Tractors & Farm Equipment [84]	12%	5%	<p>1. Tractors attract a concessional GST of 12%, while specified parts of tractors attract GST at a rate of 18%. Parts used in tractors other than such specified parts attract GST @ 28%.</p> <p>2. The present request is for a Nil or 5% GST rate on tractors and farm equipment.</p> <p>3. Further reduction in GST rates on tractors would deepen the GST rate inversion that is already present.</p>

S. No	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>4. Also, reduction in the rate of GST on tractors would make imports cheaper and this would not be in interests of domestic tractor manufacturers.</p> <p>5. No change proposed.</p>
113.	Imitation <i>Zari</i> [5605]	12%	5%	<p>1. <i>Zari</i> is intermediate product used in manufacturing of borders of Silk and cotton sarees. The applicable GST rate is 12% vide entry at S. No. 137 of Schedule II.</p> <p>2. In Oct, 2017, concessional rate of 5% was prescribed for 'Real <i>Zari</i> thread (gold) and silver thread, combined with textile thread.</p> <p>3. The present request is for 5% GST rate on imitation <i>Zari</i> on same lines.</p> <p>4. Fitment Committee examined the issue and noted that 12% is already a concessional rate.</p> <p>5. No change proposed.</p>

c) Issues deferred by the Fitment Committee for further examination in relation to goods - Annexure III

Annexure-III

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
1.	Khari, Cream rolls (Bakery product) [1905]	5%	5%	<ol style="list-style-type: none"> Currently, concessional GST rate of 5% is applicable on Rusks, toasted bread and other toasted products falling under CTH tariff item 1905 40 00. Other bakery products such as Pastry, cake, biscuits, communion wafers, etc (other than pizza bread, Khakra, plain chapatti or roti, bread, rusks, toasted bread and other toasted products) attract GST rate of 18%. Fitment Committee examined the issue and observed that further details regarding the nature of product, process of preparation is required before making any suggestions. Fitment Committee proposed that the matter may be deferred until further inputs are provided.
2.	Heavy feedstock, Vacuum Gas Oil (VGS) / Reformates, etc [27]	18%	Nil	<ol style="list-style-type: none"> The main refinery products namely, petrol, diesel and ATF are outside purview of GST, while GST is levied on other refinery products including intermediate streams that are shared between refineries. Due to high GST rate, negligible imports of heavy feedstock by refineries. Feedstock is informed to be cheaper than crude while being a viable option to crude oil. It was also informed that easy availability of heavy feedstock will lead to better capacity utilization of refineries and that the revenue implication for OMCs is only around Rs. 321 crores Customs duty on these items, including straight run fuel oil, low sulphur wax

S. No.	Description/ HSN	Present GST rate	Requested GST rate	Comments
				<p>residue, vacuum residue, slurry, vacuum gas oil, etc was reduced to 2.5% during Budget in Feb, 2022.</p> <p>5. Fitment Committee discussed the issue and noted that further clarity is needed on the matter regarding the intended use, capacity utilization potential and benefits accruing from the item.</p> <p>6. Fitment Committee proposed that additional inputs may be sought from the Ministry of Petrol and Natural Gas and the matter may be deferred until further inputs are provided.</p>

d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relations to services - Annexure IV. Recommendations made by the Fitment Committee on issues related to Tour and Hospitality Sector, and on positive list of services to be specified in Sr. No. 3/3A of Notification No. 12/2017-CT(R) are given at Annexure-IVA and Annexure-IVB, respectively.

Annexure IV

(Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relation to services)

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
1.	GST at 18% on supply of ice-cream by ice-cream parlours may be applied with effect from 06.10.2021.	<p>Ice-cream parlours were under the bonafide impression that their activity is covered by the definition of restaurant service and have accordingly been collecting and paying 5% since 01.07.2017 and have not availed ITC.</p> <p>Moreover, the sector has been badly hit by the pandemic and would have to discharge the differential 13% for the past period from their own funds.</p> <p>In case the increased rate of GST cannot be applied prospectively, they may be allowed ITC for the past period. (Indian Ice-cream Manufactures' Association)</p>	<p>On the recommendation of the GST Council in its 45th meeting it was clarified that <i>ice cream parlours sell already manufactured ice-cream and they do not have a character of a restaurant and hence ice cream sold at such parlour attract standard rate of 18% with ITC as applies to Ice Cream</i></p> <p>However, considering the fact that ice cream parlours opting to pay 5% in view of prevailing doubt before the 45th Council meeting did not avail ITC on input and paid 5% in cash. Such ice-cream parlours had thus foregone significant ITC benefit. Hence, in the overall circumstances of the case, it would be appropriate that past cases of 5% without ITC be regularized. This would avoid unnecessary litigation.</p> <p>Post October 2021, the Ice Cream parlours are paying GST at the rate of 18% with ITC.</p> <p>Accordingly, instruction may be issued to regularise past cases in this manner. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%.</p>
2.	Waiving off the GST for all the higher institutions in the state of Tamil Nadu.	Heads of the various Institutes/ Vice — Chancellors of Universities in the Tamil Nadu brought to notice to State Govt	Education services by or to educational institutions are mentioned at Entry 66 of the Notification No. 12/2017 dt

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		<p>regarding GST liability on <u>sale of application forms</u> to the prospective students, issue of <u>migration/ eligibility forms</u> to the graduated students, <u>affiliation works</u> and other educational activities.</p> <p>The services provided by the educational institution to students, faculty and staff are exempt vide Notification 12 / 2017 — Central Tax (rate) dated 28.06.2017.</p> <p>It is requested to waive off the GST for the all the higher educational institutions on activity such as sale of forms, issue of eligibility forms etc.</p>	<p>28.07.2017 which inter alia says that-</p> <p>Services provided –</p> <p>(a) by an educational institution to its students, faculty and staff; [(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]</p> <p>(b) to an educational institution, by way of, - </p> <p>(iv) services relating to admission to, or conduct of examination by, such institution; </p> <p>Thus, it can be seen clearly that all kind of services by an ‘education institution’ to its students are exempt. Consideration charged by the education institutes by way of entrance fee are also exempt. Thus, this entry/ exemption is wide enough to cover the amount charged for application fee for entrance, or for issuance of eligibility certificate in the process of entrance/admission to the prospective student. Accordingly, such activity of educational institution would also be exempt. Issuance of migration certificate by universities is covered by Sr. No. 66 (Part (a)) of Notification No. 12/2017-CT(Rate) dated 28.06.2017.</p> <p>On the issue of services supplied by universities/boards or other educational organizations by way of granting affiliations to educational institutions, clarification has already been issued</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			vide Circular No. 151/07/2021-GST dated 17.06.2021 (Para 4 (iii)). It is proposed to clarify accordingly.
3.	<p>To clarify the following:</p> <p>a. Whether the subsidy payable /paid by Universal Service Obligation Fund (USOF under the PPP agreement (this subsidy, as accounted for in the DoT budget, in common parlance termed as viability gap funding – VGF)? This subsidy is paid over a period of time, say 5 years.</p> <p>(b) Whether there is any change in applicability of GST where at first USOF transfers funds to Bharat Broadband Network Ltd (BBNL) as its Project Monitoring Agency (PMA) and the actual amount of subsidy is disbursed by BBNL to the concessionaire?</p> <p>(c) In case GST is applicable on amount payable /paid to concessionaire by BBNL, whether BBNL can accumulate input tax credit for the GST amount paid?</p>	This issue has been raised for clarification by DOT.	<p>A bidder, bidding for telecom circle etc., may either pay a premium for grant of concession by DoT, or may seek subsidy (VGF). The successful bidder would be the telecom service provider (TSP) who pays highest premium (if bid is on premium) or who seeks lowest subsidy (VGF, if bid is made on subsidy). In such case:</p> <p>(i) all payments including the premium paid by concessionaire will form part of consideration paid for acquiring concession and shall be liable to GST. Further, the network created by TSP and transferred to USOF/BBNL/Government at the end of concession period shall attract GST on the depreciated value of supply.</p> <p>(ii) In case the bidder bids for getting subsidy (also termed as VGF) the same is not taxable. Otherwise also subsidy by Government does not constitute a consideration for the purposes of levy of GST.</p> <p>(iii) The concessionaire shall be eligible to take applicable ITC as per the provisions of the CGST Act, 2017.</p> <p>An appropriate clarification would be issued to Department of Telecommunication accordingly.</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
4.	Request to clarify the applicability of exemption on the service of storage or warehousing of cotton in baled or ginned form.	<p>Entry 24 B of Notification 12/2017-CT(R) dated 28.06.2017 provides exemption from GST on services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.</p> <p>Telangana AAR in M/s Kakkirala Ramesh has ruled that the processing of raw cotton by way of ginning and pressing into fully pressed bales is not covered by the exemption notification.</p> <p>Chandigarh CESTAT in the case of R.K.&Sons vs CCE, Rohtak have ruled as “....cotton fibre obtained by ginning cotton plucked from cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from ‘cotton-with-seeds’ plucked from cotton plants...”</p> <p>Supreme Court in the case of State of Punjab and Others vs. Chandu Lal Kishori Lal & Others have held that “cotton ginned or unginned is treated as single commodity or a single spice. They cannot be held to be two distinct commodity”</p> <p>In the service tax regime, Entry no. 40 of mega exemption notification no. 25/2012-Service Tax dated 20th June 2012 provided for “services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or</p>	<p>Notification 12/2017-CT(R) dated 28.06.2017, Entry 24 B exempts services by way of storage and warehousing of, inter alia, raw vegetable fibers such as cotton, flax, jute etc.</p> <p>Cotton Fiber glossary by barnhardtcotton.net defines “cotton staple, virgin cotton or raw cotton” as cotton fibers that are removed from the cotton seed by the gin.</p> <p>CESTAT Chandigarh in the case of R.K.& Sons vs CCE, Rohtak dated 14th July 2016 has observed as under:</p> <p><i>Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away from cotton plucked from cotton plants. Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants.”</i></p> <p>It may be clarified service by way of storage or warehousing of cotton in ginned and or baled form is covered under Entry 24B of notification 12/2017-CT(R) dated 28.06.2017 in the category of raw vegetable fibres such as cotton.</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		<p>baled”.</p> <p>Most of the cotton produced in India is stored in warehouses predominantly in the form of bales only as it provides convenience in warehousing, loading, unloading and stacking operations. ‘Cotton with seed’ is generally not stored in the warehouses, rather it is kept in farm stores viz. temporary shades/structures only.</p> <p>The term “warehousing” used in the exemption notification in respect of the raw cotton must be for baled cotton.</p>	
5.	To clarify that exemption under Sr. 9B of Notification 12/2017-CT(R) covers services associated with transit cargo both <u>to and from</u> Nepal and Bhutan.	<p>No GST is charged on freight services with respect to transportation of containers loaded with Nepal’s transit cargo from gateway ports in India and destined to Nepal. However, GST is charged on freight services with respect to transportation of empty containers returning from Nepal to India.</p> <p>As per Article III and IV of Treaty of Transit between India and Nepal, the transit cargo of Nepal transiting through India, whether it be Nepal’s import from a third country or Nepal’s export to a third country is covered under the definition of traffic-in-transit and thus exempt from customs duties, transit duties and other charges. However, GST notification that is, Notification No. 12/2017-CT(R) exempts only the supply of services associated with transit cargo to Nepal and Bhutan and does not exempt supply of services associated with transit cargo from Nepal and Bhutan. This is leading to Container Corporation of India Limited (CONCOR) charging GST on transportation of empty containers returning from Nepal to India.</p>	<p>GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017 based on recommendations of the 20th GST Council Meeting. The opening sentence of the Agenda Item 7(ix) placed before GST Council on this issue, makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.</p> <p>The relevant entry reads as under:</p> <p><i>9B- Chapter 99- Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries)- Nil</i></p> <p>Clearly movement of entry containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo. The intention has always been to exempt such service.</p> <p>It is proposed to clarify accordingly.</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
6.	All the benefits and exemptions allowed for aircraft leasing in GiFT city may be granted in case of leasing of hovercraft inside and outside of the GiFT city.	<p>The hovercraft also known as air-cushion vehicle or ACV is capable of travelling over land, water, mud, ice and other surfaces.</p> <p>Hovercrafts are hybrid vessels operated by a pilot as an aircraft.</p> <p>Operation of hovercraft in inland waterways such as Thane creek between Navi Mumbai and Mumbai to reduce the traffic snarl and also save environmental problems by fast moving hovercraft.</p>	<p>Sl. No. 547A of Notification No. 50/2017-Customs, which exempts aircrafts, aircraft engines and other aircraft parts imported into India under lease from payment of import IGST under Section 3(7) of Customs Tariff Act, subject to the conditions listed in Condition No. 102 of the Notification.</p> <p>Similar exemption has been extended to all goods imported under lease [Sr. No. 557B of Notification No. 50/2017-Customs <i>refers</i>].</p> <p>Therefore, parity with leasing of aircrafts already exists. It is proposed to clarify to gift city accordingly.</p>
7.	Request to clarify the taxability of transactions between lead-insurer and co- insurers. IRDA is of the view that such transaction may not be covered within the scope of supply and accordingly no GST is leviable.	<p>In co-insurance business, insured (policy holder) chooses to cover same risk/policy with more than one insurer (insurance companies).</p> <p>The lead insurer handles the premium and claim as a single point of contact for insured (policy holder) and on behalf of other insurers sharing the risk.</p> <p>The entire premium is collected by the leader and payment of 100% of the claims is the responsibility of the leader.</p> <p>GST is leviable on the policy holders' premium which is collected and deposited 100% by the lead insurer.</p>	<p>The transaction value of premium collected from the insured (policy holder) by the lead insurer is apportioned among the co-insurers/lead insurer but the GST on entire premium is discharged by the lead insurer as mentioned in clause III(e) of Co-insurance agreement which says that the lead insurer will be responsible for tax collection, remittance and filing return relating thereto.</p> <p>Co-insurers and lead insurer are separate legal entities on its own and distinct from each other. In GST, each distinct entity is registered separately and has to declare their taxable value and discharge GST on the declared taxable value.</p> <p>While lead insurer raise the bill to insured and pays GST on it, it subsequently apportions the premium</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		<p>The arrangement between insurance companies in a co-insurance business is on account of agreement for sharing the risk and for apportionment of the respective share of the premium (already taxed) and hence is not covered within the scope of supply.</p> <p>It is mentioned that all insurers (General Insurance Companies) licensed by IRDAI are signatories of Co-insurance agreements which prescribes certain standardized procedures and formats for co-insurance transactions. Clause III(e) of the agreement says that-</p> <p>Service Tax: The Lead Insurer shall be responsible for collection of tax applicable on the 100% premium and for the remittance of the same to the Govt and also submission of necessary statutory return.</p>	<p>amongst the co-insurers in the ratio of risk covered.</p> <p>In this arrangement, though lead insurer pays tax on entire amount, the co-insurer being separate legal entity and receiving a share of premium from lead insurer are liable to pay GST on premium portion they receive. In GST, this arrangement could only ensure that co-insurer avail ITC on their input services and pay GST on their output service, i.e. share of premium. Lead insurer could avail the ITC of GST paid by co insurer.</p> <p>Hence no extra liability is created if co-insurer pays tax on their share of premium received from lead insurer. In fact, if co-insurer is absolved of their liability, they would lose their proportionate ITC while lead insurer would end up paying higher amount of tax in cash. IRDAI may be advised accordingly.</p>
8.	Request to clarify/ exempt conservancy contracts concluded by Indian Army from payment of GST under provisions of IGST/CGST Act, 2017	<p>Articles 243G & 243W of constitution when read in conjunction with notification 12/2017-CT(R) dated 28.06.2017 make it clear that GST should not be applicable to Conservancy Services being a function entrusted to municipality & the service being provided to Central government.</p> <p>Exemption for conservancy contracts from GST to Indian Army would facilitate utilization towards operational as well as modernization requirements.</p>	<p>1. Municipalities and Panchayats carry out functions entrusted to them under Articles 243W & 243G respectively. Functions that may be entrusted to panchayats and municipalities are listed in schedule 11 & 12 of the constitution.</p> <p>2. Central Government, State Governments & Union Territories also perform functions listed in Schedule 11 & 12 such as irrigation, public health etc.</p> <p>3. Services by Central Government, State Government, Union Territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under Article</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			<p>243G of the constitution or to a municipality under article 243W of the constitution have been declared a 'No Supply'. [Notification 14/2017-CT(R) dated 28.06.2017]</p> <p>4. Supply of Pure services /composite services to central government, state government, union territory or local authority by way of any activity in relation to functions that may be entrusted to panchayats & municipalities have also been exempted. [entry 3 & 3A of notification 12/2017-CT(R) dated 28.06.2017]</p> <p>5. The exemption under entry 3& 3A of notification 12/2017-CT(R) dated 28.06.2017 has been given on pure services & composite supplies procured by central government, state government, union territory or local authority for performing functions listed in the 11th and 12th schedule of the constitution.</p> <p>6. If such services are procured by a Government Ministry/Department which does not perform function(s) listed in 11th and 12th Schedule in the same manner as a local body does for general public, the same shall not be exempt under Sr. No. 3 and 3A of Notification 12/2017-CT(R).</p> <p>7. We may clarify accordingly by way of a circular.</p> <p>8. As regards the request to exempt the same, it has no merit. Besides being a request for a new exemption, it will also block ITC of suppliers.</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
9.	To clarify whether the activity of selling of space for advertisement in souvenirs would attract tax @ 5% as per serial number (i) of Entry 21 of the Rate Notification or @18% as per serial number (iii) of entry 21 of the Rate Notification.	Different institutions/organizations like educational institutions, social, cultural and religious organizations including clubs etc., publish souvenir in the form of book where they sell space for advertisement to business organizations, professionals and others against monetary consideration. Doubts have been raised on the taxability of such activity of selling of space for advertisement in souvenirs.	<p>As per serial number (i) of entry 21 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 selling of space for advertisement in print media attracts tax @ 5% [Central Tax @ 2.5% + State Tax @ 2.5%].</p> <p>The term 'print media' has been defined in clause (zt) of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as under:</p> <p>"print media" means, —</p> <p>(i) 'book' as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;</p> <p>(ii)</p> <p>Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines 'book' as follows:</p> <p>"Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.</p> <p>It therefore appears that 'book' is defined in the Press and Registration of Books Act, 1867 in an inclusive manner with a wide ambit which would cover souvenir book also. If that be so, the activities carried out by different institutions/ organizations towards selling of space for advertisement in</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			<p>souvenirs get covered by serial number (i) of entry 21 of the Rate Notification, and therefore would attract tax @ 5%.</p> <p>We may clarify accordingly.</p> <p>Further, the definition of the term 'print media' as defined in Notification 12/2017-CT(R) may also be included in Notification 11/2017-CT(R).</p>
10.	To clarify the taxability of a supply where minerals are transported from mining site to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time [whether the same would be covered under Sr. No. 18 of notification 12/2017-CT(R)].	<p>Transport Service Providers operating in mining belts of Keonjhar, Angul and Talcher are classifying their transport service under HSN 9965 and claiming GST exemption vide Sr. No. 18 of Notification 12/2017-CT(R) citing that they are not Goods Transport Agency as they do not issue consignment note. Consequently, the recipients of such transportation service are also not discharging GST under RCM.</p> <p>However, as per the work orders issued by service recipients, the transporters have provided transportation vehicles such as tipper, dumpers and loaders with drivers for transportation of minerals within mining areas for a specific time duration.</p> <p>During the said period the vehicle remains within control of the service recipient and the movement of minerals from mines to other areas takes place as per directions of the recipient. Further the transporter cannot deploy the vehicles for any other purpose.</p> <p>From above, it appears that the services provided by transporter is classifiable</p>	<p>The fact of the reported case is that vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.</p> <p>This is nothing but time charter of goods carriage or rental services of transport vehicles with operator which fall under heading 9966 and attract GST @ 18% under Sr. No. 10 part (iii) of Notification No. 11/2017-CT(R). This is not a service of transport of goods by road.</p> <p>Accordingly, it is proposed to clarify that where the supply is for deploying vehicle along with operator for transportation of goods for a specified duration of time, the service is classifiable under Heading 9966 that is, rental services of transport vehicles with operators and would attract GST at the rate of 18%.</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		under HSN 9966 i.e., rental services of transport vehicles with operators which attract 18% GST.	It is also proposed that where renting of trucks/goods carriage with operator also include the cost of fuel the GST rate may be prescribed at 12% with ITC.
11.	Indian Foundation of Transport Research and Training has requested to rationalize GST Rate slabs on gross freight charges from four (nil; 5%, 12% and 18%) to two slabs (nil and 12%) for all goods to be transported by road.	Transporters/GTAs are arbitrarily placing transport services under any of the four slabs by changing language of road transport contracts to evade taxes.	<p>Some GTAs are simultaneously paying GST @ 5% without ITC on some consignments and @ 12% with ITC on others.</p> <p>This is in violation of the condition prescribed in Sr. No. 9 of Notification 11/2017-CTR wherein it has been clearly stated that <i>“the goods transport agency opting to pay central tax @ 6% under this entry shall, thenceforth, be liable to pay central tax @ 6% on all the services of GTA supplied by it.”</i></p> <p>Fitment Committee after detailed recommendation has made following recommendation:</p> <ul style="list-style-type: none"> (i) Two rates, i.e. 5% without ITC and 12% with ITC may continue. (ii) A GTA opting to pay 12% with ITC may be allowed to avail this option for certain consignments simultaneously availing 5% without ITC on certain other consignments provided he pays GST on forward charge basis on all his services and accordingly reverses proportionate credit on services where he pays GST at the rate of 5% without ITC. (iii) The GTA which opts for 5% without ITC on reverse charge basis shall not have option of paying GST at the rate of 12% with ITC or

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			<p>5% without ITC on forward charge basis on any of his service.</p> <p>(iv) A GTA shall have option to switch from one option to the other at beginning of the Financial Year after making a declaration in the manner as may be laid down.</p> <p>(v) This modality would provide adequate flexibility to GTAs while not compromising the revenue.</p>
12.	Request to clarify that GST applicability or otherwise on lease premium (upfront amount) payable in respect of long-term lease of land provided by Rail Land Development Authority (RLDA) for construction of Multi-Functional complex project at Railway station.	<p>Rail Land Development Authority (RLDA) has been setup by Railway Ministry through the amendment of the Railway Act 1989 for commercial development of vacant railway land. <u>(100% ownership of Government of India)</u></p> <p>Rail Land Development Authority (RLDA) had invited tender for developing a Multi-Functional Complex (MFC) at Erode Railway Junction and a Special Purpose Company (SPC) by name Erode Infrastructures Pvt Ltd., (Developer) was a successful bidder to develop this MFC.</p> <p>RLDA has charged GST on the upfront amount.</p> <p>The Developer had filed an application before Authority for Advance Ruling, Chennai and then after rejection of application preferred an appeal before Appellate Authority for Advance Ruling, Chennai to get a Ruling regarding the applicability of Notification No.32/2017 for GST exemption.</p>	<p>S.N. 41 of 12/2017-CTR prescribes that-</p> <p><i>Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.</i></p> <p>The expressions “industrial plot” or “industrial area” have not been defined in the notification and therefore have to be assigned their common parlance meaning. A plot for commercial complex at railway station would not fall in the category of industrial plot.</p> <p>Plot in this case has been leased for development of a commercial complex. It is not an industrial plot or a plot in an</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		<p>Instead of going into the merits of the case, both the forums had rejected their application for the reason that the “Supplier” of services alone can seek a Ruling before the authority.</p> <p>The development of MFC at Erode Railway Junction will provide passenger centric amenities at a single place.</p> <p>In view of the developer, as per various judicial pronouncement and Govt policies, Railway has been considered as an Industry. Accordingly plot owned by railway and allotted to developer for development of MFC is industrial plot. Further, as it is in the area of Railways. Therefore, it is in an industrial or financial business area.</p>	<p>industrial area.</p> <p>RLDA has charged GST on the upfront amount.</p> <p>It is proposed to clarify accordingly to the concerned parties.</p>
13.	<p>To reduce GST on ropeway travel from 18% to 5%.</p> <p>Himachal Pradesh had placed this request before the GST Council in the 45th meeting</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.</p> <p>Ropeways are safest mode of passenger and materials transport and also eco-friendly. Therefore, to make them financially viable for mass transit, GST rates may be equated with conventional road transportation to attract tourists and help in economic growth.</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>The reason behind lower GST rates on transport sector is that their major input i.e. petrol, diesel and ATF are outside of GST ambit.</p> <p>With respect to ropeway travel, one of the main inputs is electricity, which is also outside the ambit of GST.</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, it was decided in the 45th GST Council meeting that Himachal Pradesh may make a presentation on the issue. Fitment may examine it.</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			<p>Himanchal Pradesh made a presentation on ropeway travel before the Fitment Committee on 05.04.2022 explaining the necessity and advantages of ropeway for hilly terrain. Copy of Presentation is annexed (Annexure A).</p> <p>Himachal Pradesh requested for GST rate of 5% with ITC on transport of both passengers and goods by ropeway.</p> <p>During the presentation, Himachal Pradesh was requested to work out the cost comparison of ropeways with other modes of transport. It was also conveyed that the 5% rate on transportation services has been prescribed either without ITC or with restricted ITC of only input services. Himachal Pradesh was requested to examine whether GST rate of 12% with ITC will be more appropriate than the 5% rate without ITC suggested by them.</p> <p>Himachal Pradesh vide note dated 12th April, 2022 has requested that GST on ropeway should be considered at par with passenger transportation services by rail and taxed at the rate of 5% with ITC of services.</p> <p>Fitment Committee recommends for consideration of the Council that GST at the rate of 5% with ITC of services be prescribed on the ropeway.</p>
14.	Request to issue Clarification - whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute	Field formation has requested for clarification whether preferential location charges (PLC) collected in addition to the upfront amount or lease premium charged for long term lease of land constitute part of the lease premium or upfront amount for the purpose of exemption benefit under	<p>Entry 41 of the said notification is produced as below-</p> <p><i>“Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long-term lease (of thirty years, or</i></p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
	part of the lease premium or upfront amount charged for long term lease of land. ” -(entry 41) Notification No. 12/2017-CTR dated 28.06.2017	S.No. 41 of notification No. 12/2017-CTR.	<p><i>more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.”</i></p> <p>Upfront amount mentioned in the notification include all the cost or price payable for the grant of long-term lease (as long as it is paid upfront).</p> <p>Allowing choice of location of plot is part of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.</p> <p>Clarification may accordingly be issued by way of a circular.</p>
15.	Request to clarify the issue of applicability of GST on payment of honorarium to the Guest Anchors.	Sansad TV invites guest anchors for participating in their shows and pays remuneration to them in the form of honorarium. Some of the guest anchors have requested payment of GST @ 18% on the honorarium paid to them for such appearances.	<p>Supply of all goods & services are taxable unless exempt or declared a ‘no supply’. Services provided by the guest anchors in lieu of honorarium would attract GST liability.</p> <p>However, the threshold exemption limit on aggregate turnover of the service provider would apply. Liability would arise in case threshold exemption limit for services is crossed.</p> <p>Clarification may accordingly be issued by way of a circular.</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
16.	Request to clarify that the additional toll fees collected by the Concessionaires in line with direction of Ministry of Road Transport & Highways (MoRTH) from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag is exempt from GST.	<p>Sr. No. 23 of Notification no. 12/2017-CT(R) dated 28.06.2017 exempts service by way of access to a road or a bridge on payment of toll charges. Circular 164/20/2021-GST dated 06.10.2021 had also clarified the non-applicability of GST on collection of Additional User Fees.</p> <p>MoRTH vide circular dated 16.02.2021 have directed to collect additional fees from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.</p> <p>It is clear that the additional amount collected from road users is nothing but “additional toll fees” or “Extra toll fees”.</p> <p>Since the basic toll fees is exempt from GST, hence additional toll fees will also be exempt from GST. It is part of the same supply of access to road. Under service tax regime, payments made for excess baggage to airlines by passengers is part of the main activity of ‘transportation by air’ and excess parking charges for overtime would be consideration for parking supply only.</p> <p>Hence, any service provided “by way of” access would be exempt, in line with original services, irrespective of the charges collected for it and the quantum thereof.</p>	<p>Entry 23 of notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 exempts service by way of access to a road or a bridge on payment of toll charges.</p> <p>Ministry of Road Transport & Highways (MORTH) vide circular dated 16.02.2021 has directed to collect additional fees from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.</p> <p>Essentially, the additional fees collected from the users of the road not having a functional Fastag, is in the nature of Toll Charges.</p> <p>On a similar issue of collection of overloading charges in the form of a higher toll (2/4/6/7 times of the base rate of toll), it has already been clarified vide circular number 164/20/2021-GST dated 06.10.2021, which was issued on the basis of recommendation of GST Council that overloading charges at toll plazas would get the same treatment as given to toll charges.</p> <p>Therefore, additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			Clarification may accordingly be issued.
17.	Taxability of services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF).	<p>IVF is treatment method for refractory infertility.</p> <p>IVF is offered at major obstetrics and gynae centres where advanced technology is available including in Government sectors such as in PGI Chandigarh, AIIMS, New Delhi etc.</p> <p>The Assisted Reproductive Technology (Regulation) Act, 2021 has been implemented to regulate ART procedure and provides guidelines for establishing any clinic for providing IVF treatment using ART procedure.</p>	<p>Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017- CT(Rate) dated 28.06. 2017].</p> <p>Health care services is defined vide 2(zg) of the notification No. 12/2017-CT(Rate) dated 28.06. 2017 as –</p> <p><i>“health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;</i></p> <p>The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. Such services are covered under the definition of health care services for the purpose of above exemption notification.</p> <p>Clarification may accordingly be issued by way of a circular.</p>
18.	To clarify whether sale of developed plots is taxable under GST.	Appellate Authority for Advance Ruling, Surat has decided that sale of plots of land having primary amenities such as drainage line, water line,	As per Sl no. (5) of Schedule III of the CGST Act, 2017, “Sale of land” is

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		electricity line, land leveling etc. as may be required by local authorities is not covered under Entry No.5 of Schedule-III of the CGST Act, 2017 and such sale of developed plots is a supply of taxable service falling under the head 'Construction services' and is liable to GST at 18%.	<p>neither as a Supply of Goods nor a Supply of Services, therefore, sale of land does not attract GST.</p> <p>Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc.</p> <p>Sale of such developed land is also sale of land and is covered by S. No. 5 of Schedule III of the CGST Act, 2017 and accordingly does not attract GST</p> <p>However, supply of development rights over land or a plot of land (TDR) by land owner to developer under a Joint Development Agreement or otherwise is obviously taxable.</p> <p>Clarification may accordingly be issued by way of a circular.</p>
19.	To clarify applicability of GST on payments in the nature of liquidated damages, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise.	A number of cases have been brought to the notice of the Board where question has been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.	<p>Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been declared to be a supply in para 5 (e) of Schedule I of CGST Act.</p> <p>Various transactions have been sought to be classified by the tax authorities under the said description and in many cases this has led to disputes and litigation.</p> <p>The issues arising out of taxation of activities by way of "agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" were deliberated in detail. It was felt that the entry is being very widely and at times erroneously interpreted which is leading to a lot of disputes and litigations. It was generally felt that a circular clearly</p>

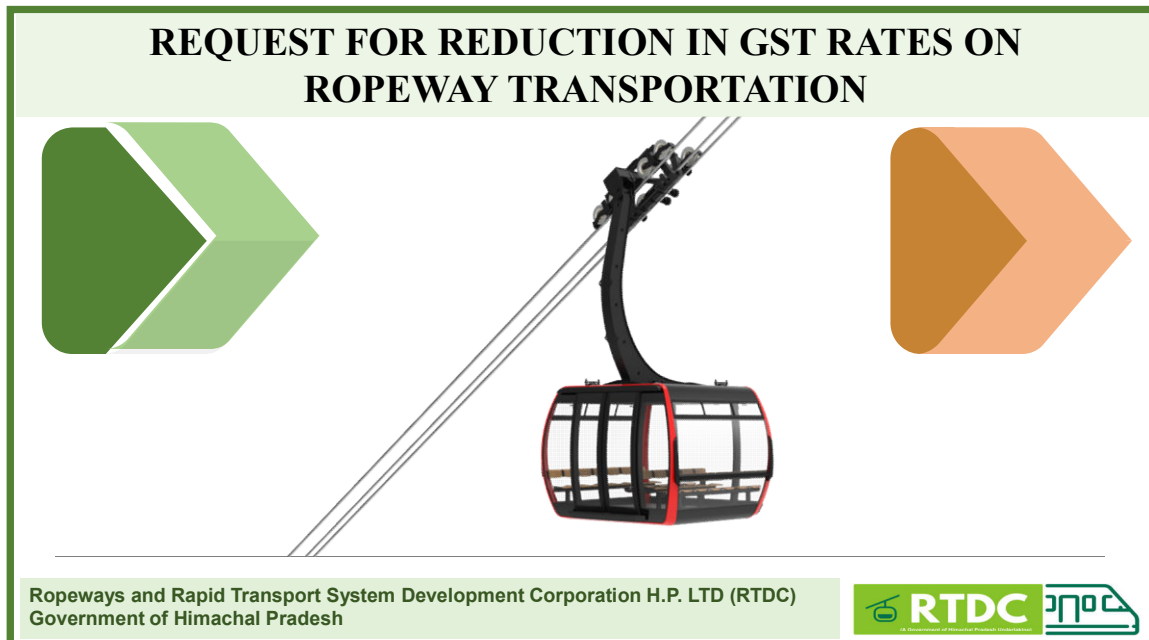
Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			<p>explaining the situations in which an activity shall amount to a supply of service by way of agreeing to refrain from an act or to tolerate an act or a situation etc. may be issued. After detailed deliberations over course of two meetings, the Fitment Committee recommended that the issues involved may be clarified by way of the enclosed draft circular placed at Annexure B. The draft circular incorporates the basic principles of GST law, Indian and international jurisprudence and international VAT/GST guidelines and practices and elucidates guiding principles with the help of suitable examples/ illustrations.</p> <p>Issuance of the guidance note/ circular is expected to resolve/ reduce litigation.</p>
20.	To clarify whether RCM is applicable on transportation of passengers (Heading 9964) or renting of motor vehicle designed to carry passengers (Heading 9966).	<p>Transportation of passengers by any motor vehicle designed to carry passengers is covered under HSN 9964.</p> <p>Renting of motor vehicle designed to carry passengers is covered under HSN 9966. The GST rate is 5% in both the cases (where ITC is not availed).</p> <p>With the introduction of reverse charge on renting of motor vehicle designed to carry passengers w.e.f. 01/10/2019, confusion has been created as to which services are covered under reverse charge.</p> <p>For instance, whether rent a cab service availed by employees of the Company be treated as transportation of passenger services (9964) or renting of motor</p>	<p>GST rate for renting of vehicles is 5% with ITC of input services in the same line of business or 12% with full ITC.</p> <p>Based on recommendations of the 37th GST Council Meeting services provided by way of renting of any motor vehicle for transport of passengers, provided by a non- body corporate to a body corporate was brought under RCM.</p> <p>Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. According to the explanatory notes to heading 9966, the service covered here is renting of motor vehicle for transport of passengers for a period of time where the renter defines how and when the vehicles will be operated, determining schedules, routes</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		vehicle (9966)? Also, whether the bus services utilised in the factories for to and fro movement of employees would be covered under reverse charge?	<p>and other operational considerations.</p> <p>Therefore, where the body corporate hires the motor vehicle (for transport of employees, etc.) for a specified period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM.</p> <p>However, where the body corporate hires the motor vehicle for specific journeys or voyages, and not for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.</p> <p>Clarification may accordingly be issued by way of a circular.</p>
21.	To clarify whether the engagement of vehicles by firms for transportation of their employees to and from work is exempt under entry at Sr. No. 15(b) of Notification No. 11/2017-CTR.	<p>Transportation of passengers by non-air-conditioned contract carriage is exempt from GST.</p> <p>However, this exemption is not applicable for transportation of passengers by way of tourism, conducted tour, charter or hire.</p> <p>There is a big ambiguity in this entry. It is not clear as to what are the services which are exempted under the said entry.</p> <p>Where factories are engaging buses for transportation of employees to and fro factory under a contract, whether the services of transport would be taxable</p>	<p>Sr. No. 15 (b) of Notification 12/2017-CTR exempts <i>“transport of passengers, with or without accompanied belongings, by non-air-conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire.”</i></p> <p>‘Charter or hire’ excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.</p> <p>Thus, the exemption does not apply to time charter. Only voyage charter service is covered under this exemption.</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		or exempt under this entry? Can it be said that the non A.C. buses are for hire or charter and therefore not eligible for exemption.	Clarification may accordingly be issued by way of a circular.
22.	Clarification of GST rate applicable for the service of “ <i>construction, supply, installation and commissioning of 2.00 LLPD Dairy Plant as per designs specification and BOQ at Purnea under Kosi Dairy Project a unit of COMFED on Turn-Key basis under NCBC fund</i> ”.	<p>Diversion ruling have been given by the authorities of advance ruling with regard to construction of industrial plants such as diary plant and cattle feed plants.</p> <p>In case of a turn key project for construction, supply, installation and commissioning of 2.00 LLPD Dairy Plant, it has been held by Advance Ruling Authorities of Bihar and Gujarat that the same does not result into an immovable property and is therefore not a supply of works contract. This being so, such supply is not eligible for concessional rate of 12% applicable on works contract supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.</p> <p>On the other hand, Advance Ruling Authority of Gujarat has ruled that supply of a functional Cattle Feed Plant, inclusive of its Erection, Installation and Commissioning and related works is Works Contract Service Supply, falling under heading 998732 and attracts GST at 18%</p>	<p>Serial number 3(v)(f) of notification no. 11/2017 CTR dated 28.06.2017 prescribes GST rate of 12 % on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, <u>machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.</u>”</p> <p>A contract of the nature described here for construction, installation and commissioning of a Dairy Plant constitutes supply of works contract.</p> <p>There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property.</p> <p>Such works contract services are also eligible for concessional rate of 12% GST under serial number 3(v)(f) of notification no. 11/2017 CTR dated 28.06.2017.</p> <p>Clarification may accordingly be issued by way of a circular.</p>

Annexure-A

Power Point Presentation (PPT) as Annexure-A regarding reduction of GST on ropeway travel from 18% to 5% in respect of Point 13 of above Annexure-IV



BACKGROUND

The history of ropeways dates back to the 1600s in Himachal Pradesh. At that time these were primarily used for transportation for timber and crossing of rivers Jhullas. With the advancement of technology and innovations, there has been an increase in the demand for Ropeways. Also, there is an increase in passenger transportation from this mode.

Ropeways are the safest mode of passenger and material transportation and are an eco-friendly solution for providing connectivity, the Government of Himachal Pradesh is mulling an idea for ropeways as a mode of transportation throughout the state with the following **objectives**:

1. To decongest cities- Shimla, Manali and Dharamshala.
2. To connect eligible **283 habitations (250 + population)** under PMGSY that are still unconnected due to non-availability of land or forest problems.
3. To provide connectivity to unexplored new tourist places and increase tourism potential of existing location.
4. To **provide all-weather ropeway** connectivity to remote/tribal areas that are not accessible due to heavy snowfall in winters.
5. To provide **first and last mile connectivity**.
6. To provide overhead transportation (Sky Buses etc.) on high density roads in the state.



BACKGROUND

The Government of Himachal Pradesh has in the recent past created the Ropeways and Rapid Transportation System Development Corporation (RTDC) under the Transport Department, a single nodal agency for the construction of ropeways and other mass rapid transportations systems in the state.

The transportations by means of ropeways will not only be restricted to tourism purposes but **will be mode for urban as well as rural transportations**.

Ropeway as **mass transit is used in many countries** i.e. Bolivia, Brazil, Singapore, Mexico, etc.

In Mexico MEXICABLE, a cable car line 4.9 km (three miles) long soars above Ecatepec, a poor suburb of Mexico City open for just over a year, its 185 gondolas carry 18,000 people a day between San Andres De La Canada, at the top of the hill and Santa Clara Coatitla at the bottom.

Mi Telefericol Cable Car is serving the La Paz-El Alto metropolitan area in Bolivia.

As of September 2018, the system consists of 25 stations along eight lines:
Red, Yellow, Green, Blue, Orange, White, Sky Blue, and Purple.



Reduction in GST Rates in Ropeways from 18% to 5%

Need for Ropeways

- In India, aerial ropeways have **the potential to be developed** as a means of public transportation and has a huge scope in promoting tourism.
- Mass transit systems provide settlements with **significant advantages** for social, economic and environmental improvements.
- **Geographical & topographical barriers** and infrastructure costs prevent the implementation of 'conventional public transportation systems' in regions like hilly terrains and inland waterways whereas ropeways can be easily installed in these locations.
- The **maintenance** of existing **roads is another problem** due to heavy **rainfalls, soil erosion, landslides and even snowfall** in certain regions
- **Seamless connectivity is one of the main ingredients in development of an area.**



Reduction in GST Rates in Ropeways from 18% to 5%

Advantage of Ropeways

- To improve connectivity between the villages of hilly terrain in states like **Himachal Pradesh**, **simple and cost-effective aerial ropeway system** can be introduced because **road transport fails** when it **snows or rains heavily**.
- Help in overall development of state by developing the district, town and village as a tourism hub and provide employment.

Sustainability and Environment

- Ropeway provide a **high-quality transport experience**, contribute **little to air pollution or climate change**, and are particularly well suited to the challenging terrain.
- Ropeways are also able to maintain the general landscape of the space and **are eco-friendly** means of transportation.



Reduction in GST Rates in Ropeways from 18% to 5%

The factors unique to ropeway systems which make them ideal for not only tourist destinations but for densely populated towns & cities are:

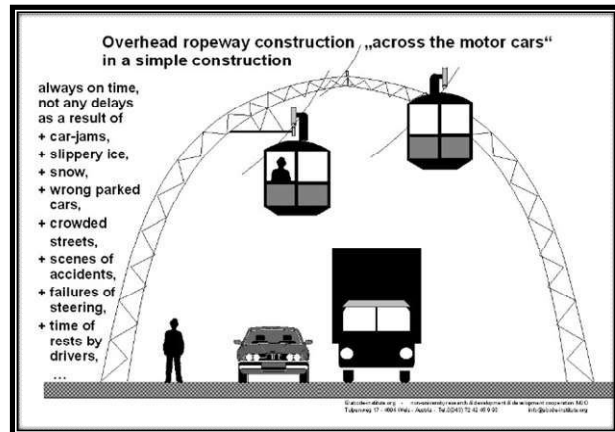
- Least capital investment amongst all mass transit systems
- Minimal footprint with least traffic disruption
- Zero pollution at point of installation
- Incremental scalability
- Least cost of operation and maintenance among mass transportation systems
- Ropeway systems (CEN) have been rated as the safest mode for commuting



Reduction in GST Rates in Ropeways from 18% to 5%

Major Benefits realize from Ropeways are:

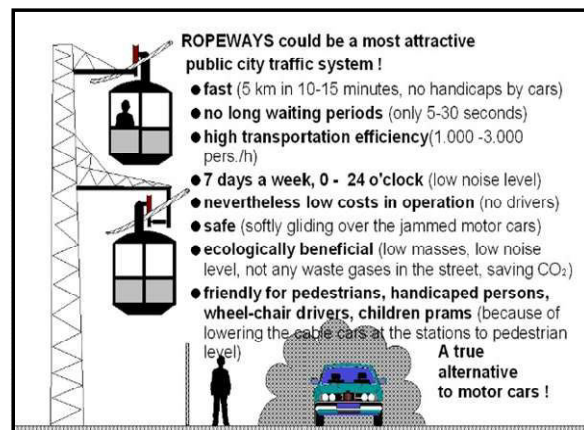
- Barrier-free mobility
- Low-space requirement
- Short realization times
- Seamless integration with other modes of public transportation
- Flexible station design options



Reduction in GST Rates in Ropeways from 18% to 5%

Ropeways are economically, environmentally & socially sustainable source of transportation as elaborated below:

- **Economic sustainability:** Costs (acquisition to operation and maintenance) of a cable car system are in equilibrium in terms of the cost-benefit ratio.
- **Environmental sustainability:** Addresses important aspects like cutting emissions, reducing waste, and noise pollution.
- **Social sustainability:** This requires the system to be inclusive, accessible, and affordable for all



ROPEWAY PROJECTS AND INNOVATIVE TRANSPORT SOLUTION WITH AN AIM TO PROVIDE FIRST AND LAST MILE CONNECTIVITY

Keeping in view the aforesaid benefits the government of Himachal Pradesh is promoting the ropeways in a big way and have created a **dedicated nodal agency “Ropeways and Rapid Transport System Development Corporation H.P. Ltd. (RTDC)”**. RTDC is undertaking identification, planning, construction, and implementation of ropeway projects and innovative transport solutions in Himachal Pradesh with an aim to provide first/last mile connectivity.

Therefore, to further provide boost to ropeway industry, it is requested:

- to reduce GST rate on transportation by ropeway **to 5% from current 18%** by creating a specific entry related to ropeways and other conventional mode of transportation in the category of services



Reduction in GST Rates in Ropeways from 18% to 5%

Benefits of Reduction in GST from 18% to 5% :

- It will further reduce the infrastructure cost of ropeways which may attract huge investments in the sector
- It will provide the much-needed boost to the sector
- The combined effect of reduced rate on ropeway projects and transportation by ropeway will reduce the cost of travelling by ropeways
- Thus, it will benefit the ultimate consumer and the Industry as well.

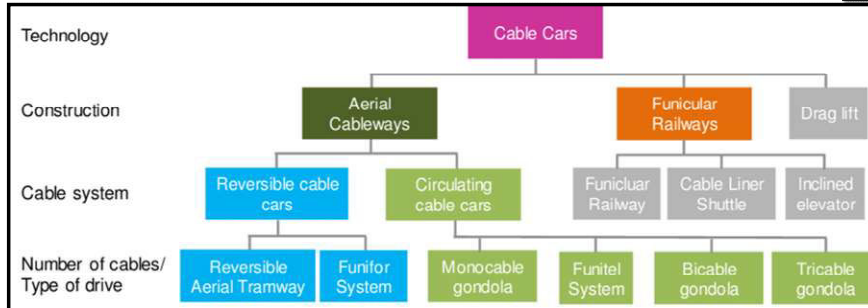


Reduction in GST Rates in Ropeways from 18% to 5%

Benefits to the stakeholders:

Businesses – The major benefits to be derived by the businesses are:

- Reduction in the cost of infrastructure and thereby lower capital requirements
- Increased sales by jump in demand due to lower price of transportation



Reduction in GST Rates in Ropeways from 18% to 5%

Benefits to the stakeholders:

Consumers – The major benefits to be derived by the consumers are:

- Reduced cost of transportation by ropeways
- **Safer and reliable** mode of transportation
- Helps in **overall decongestion** on roads and reduces the traffic jams
- Time savings as
 - offers frequent service, flexible operating schedule & better service frequency
 - it takes most of the direct routes
- Easy accessibility of transportation methods in remote areas of hilly terrains
- Allows transportation of goods at village level
- Increases access to market and services



Reduction in GST Rates in Ropeways from 18% to 5%

Benefits to the stakeholders:

Government – The major benefits to be derived by the government are:

- Contribute to state development by availability of better connectivity in hilly terrains and remote areas.
- To connect left out habitations where construction of roads is not possible due to non- availability of land or forest clearance
- To decongest cities by providing overhead means of transportation
- Lower infrastructure cost for transportation facilities in the state
- Ultimate revenue enhancement by development of area and promotion of tourism encourage economic activity around the ropeway stations for example shops, restaurants, hotels, connecting transport services. It will provide higher employment opportunities in the city as well as services to the tourists and locals
- Ease of travel would put religious and picturesque destinations on international map
- Better administration and avoidance of a lot of inconvenience for local population and visitors during large seasonal inflow of tourists and pilgrims by avoiding/reducing traffic congestion and overbearing foot load



Reduction in GST Rates in Ropeways from 18% to 5%

Benefits to the stakeholders:

Environmental – The major environmental benefits are:

- Non-polluting for the atmosphere
- Zero degrees of noise
- Non- Hazardous by-products
- Non-Cutting of trees
- Does not contribute towards Global Warming
- Maintains original landscape



Ropeway Projects and Innovative Transport Solution with an aim to provide first and last mile connectivity



- The Union Finance Minister in the Union Budget for 2022-23 announced National Ropeways Development Programme – “Parvatmala” to **improve connectivity** in hilly areas.
- The rail and air transport networks are limited in these areas, while the development of road network has technical challenges.
- The goal is to provide a **sustainable mobility solution**, improve commuter **connectivity** and **convenience** while also promoting tourism.
- This may also include congested urban regions where conventional mass transit systems are not feasible.



Budget 2022-23: GatiShakti

PM GatiShakti **encompass the seven engines** (Roads, Railways, Airports, Ports, Mass Transport, Waterways and Logistics Infrastructure).

It also include the **infrastructure developed by the state governments** as per the GatiShakti Master Plan.

The touchstone of the Master Plan will be **world-class modern infrastructure** and logistics synergy among **different modes of movement** – both of people and goods – and location of projects.

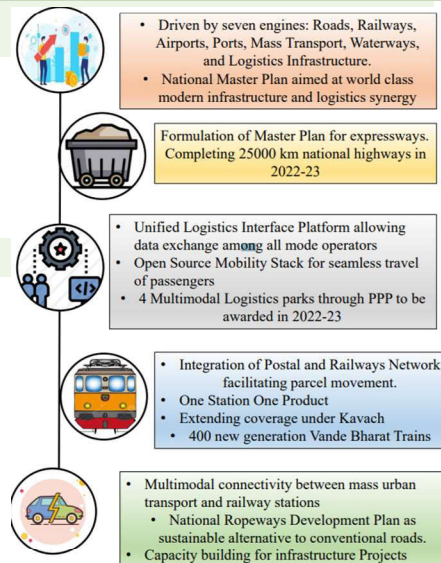
Parvatmala: National Ropeways Development Programme

As a preferred ecologically sustainable alternative to conventional roads in difficult hilly areas, National Ropeways Development Programme may be taken up on PPP mode.

The aim is to improve connectivity and convenience for commuters, besides promoting tourism.

This may also cover congested urban areas, where conventional mass transit systems are not feasible.

With technical support from the Capacity Building Commission, central ministries, state governments, and their infra-agencies will have their skills upgraded. This will ramp up capacity in **planning, design, financing (including innovative ways), and implementation management** of the PM GatiShakti infrastructure projects.



MAKE IN INDIA

- Ropeway in India is relatively a new subject and in a nascent stage in India.
- It has to be handled with utmost care as its success depends on its initial grooming.
- We should adopt latest & safest technologies as initial success will open this area for huge investment and generating employment in this sector.
- With establishment of world class equipment manufacturing facility in India, it will contribute to our export in a big way.



Proposal for Reduce GST Rate through Specific Entry

1. Reduce GST rate on Construction Service - Specific Ropeway Project

- At present, works contract service provided by way of construction of ropeway is fall under entry at Sl. No. 3(xii) of notification 11/2017 – CT (Rate) and attract GST at the rate @ 18%.
- We are proposing a new entry in Sl. No. 3 of notification 11/2017 to reduce GST rate @12% on Specific Ropeway Project.

Construction Services - Ropeway Project						
Sl. No.	Chapter(99) Section (6) / Heading	Description of Service	CGST Rate%	SGST/UTGST Rate%	IGST Rate%	Condition
3 (Proposed)	Heading 9954 (Construction Services)	Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Service Tax Act, 2017: - Construction of Specified ropeway project	6%	6%	12%	--

2. Reduce GST rate on Transportation by Ropeway

- At present, passenger transport service provided by ropeway is fall under entry at Sl. No. 8 (vii) of notification 11/2017 – CT (Rate) and attract GST at the rate @18%.
- We are proposing a new entry in Sl. No. 8 of notification 11/2017 to reduce GST rate @5% on Transportation by Ropeway.

Passenger Transport Service – by Ropeway						
Sl. No.	Chapter(99) Section (6) / Heading	Description of Service	CGST Rate%	SGST/UTGST Rate%	IGST Rate%	Condition
8 (Proposed)	Heading 9964 (Passenger transport Services)	Transportation of Passenger, with of without accompanied belongings, by ropeway	2.5%	2.5%	5%	--

Note - Specific ropeway project means government specified project like “Parvatmala” to improve connectivity in hilly areas.



IGST ON OTHER MODES OF TRANSPORTATION

The IGST on air, rail, luxury taxis/buses etc. under heading 9964-(i),(ii), (vi) is also 5% (CGST @ 2.5% + SGST/UTGST @ 2.5%).

Passenger Transport Service					Condition
Chapter(99) Section (6)/Heading	Description of Service	CGST Rate%	SGST/UT GST Rate%	IGST Rate%	Condition
Heading 9964 (Passenger Transport Service)	(i)Transport of passengers, with or without accompanied belongings, by rail in first class or air conditioned coach	2.5%	2.5%	5%	Provided that credit of input tax charged in respect of goods used in supplying the service is not utilized for paying central tax or integrated tax on the supply of the service
Heading 9964 (Passenger Transport Service)	(ii) Transport of passengers, with or without accompanied belongings by- (a) air conditioned contract carriage other than motor cab; (b) air conditioned stage carriage; (c) radio taxi. Explanation.- (a) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988); (b) "stage carriage" has the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988); (c) "radio taxi" means a taxi including a radio cab, by whatever name	2.5%	2.5%	5%	Provided that credit of input tax charged on Goods and Services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]

IGST ON OTHER MODES OF TRANSPORTATION

Passenger Transport Service					Condition
Chapter(99) Section (6)/Heading	Description of Service	CGST Rate%	SGST/UTGST Rate%	IGST Rate%	Condition
Heading 9964 (Passenger Transport Service)	called, which is in two way radio communication with central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS)	2.5%	2.5%	5%	
Heading 9964 (Passenger Transport Service)	(iii)Transport of passengers, with or without accompanied belongings, by air in economy class	2.5%	2.5%	5%	Provided that credit of input tax charged on Goods and Services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]



IGST ON OTHER MODES OF TRANSPORTATION

Passenger Transport Service					Condition
Chapter(99) Section (6)/Heading	Description of Service	CGST Rate%	SGST/ UTGS T Rate%	IGST Rate%	Condition
Heading 9964 (Passenger Transport Service)	(iv) Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport, as notified by the Ministry of Civil Aviation.	2.5%	2.5%	5%	Provided that credit of input tax charged on Goods and Services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]
Heading 9964 (Passenger Transport Service)	(iva) Transportation of passengers, with or without accompanied baggage, by air, by non scheduled air transport service or charter operations, engaged by specified organisations in respect of religious pilgrimage facilitated by the Government of India, under bilateral arrangement.	2.5%	2.5%	5%	Provided that credit of input tax charged on Goods and Services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]



IGST ON OTHER MODES OF TRANSPORTATION

Passenger Transport Service					Condition
Chapter(99) Section (6)/Heading	Description of Service	CGST Rate%	SGST/ UTGS T Rate%	IGST Rate%	Condition
Heading 9964 (Passenger Transport Service)	(iv) Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport, as notified by the Ministry of Civil Aviation.	2.5%	2.5%	5%	Provided that credit of input tax charged on Goods and Services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]
Heading 9964 (Passenger Transport Service)	(iva) Transportation of passengers, with or without accompanied baggage, by air, by non scheduled air transport service or charter operations, engaged by specified organizations in respect of religious pilgrimage facilitated by the Government of India, under bilateral arrangement.	2.5%	2.5%	5%	Provided that credit of input tax charged on Goods and Services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]



IGST ON OTHER MODES OF TRANSPORTATION

Passenger Transport Service					Condition
Chapter(99) Section (6)/Heading	Description of Service	CGST Rate%	SGST/ UTGS T Rate%	IGST Rate%	Condition
Heading 9964 (Passenger Transport Service)	(v) Transport of passengers by air, with or without accompanied belongings, in other. than economy class.	6%	6%	12%	
Heading 9964 (Passenger Transport Service)	(vi) Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.	2.5%	2.5%	5%	Provided that credit of input tax charged on Goods and Services used in supplying the service, other than the input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle), has not been taken. [Please refer to Explanation no. (iv)]



IGST ON OTHER MODES OF TRANSPORTATION

Passenger Transport Service					Condition
Chapter(99) Section (6)/Heading	Description of Service	CGST Rate%	SGST/ UTGS T Rate%	IGST Rate%	Condition
Heading 9964 (Passenger Transport Service)	(vi) Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.	6%	6%	12%	
Heading 9964 (Passenger Transport Service)	(vii) Passenger transport services other than (i), (ii) (iii), (iv), (iva), (v) and (vi) above.	9%	9%	18%	



PROPOSAL

Proposal:-

The higher component of IGST @18% on its fare make this mode of transportation financially unviable. Therefore, it is proposed to reduce the IGST on fare of ropeway transportation to 5% from existing 18%.

Request:-

It is requested to consider that, IGST rate on this mode of passenger transportation should be at par with other conventional mode of passenger transportation, it is therefore requested to reduce IGST rate on this mode of passenger transportation @18% to @5%.

“For the first time in the country, the 'Parvatmala scheme' is being started for areas such as Himachal Pradesh, Uttarakhand, Jammu-Kashmir and the North-East. This scheme will create a modern system of transportation and connectivity on the mountains. It will also strengthen the border villages of our country, which need to be vibrant, and which is also necessary for the security of the country.”

PRIME MINISTER NARENDRA MODI



THANK YOU!



Annexure-B

Draft Circular regarding GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law in respect of Point 19 of above Annexure-IV

F. No. 354//TRU
Government of India
Ministry of Finance
Department of Revenue
Tax research Unit

**Room No. 146G, North Block,
New Delhi, the _____ 2022**

To,

The Principal Chief Commissioners/Chief Commissioners/ Principal Commissioners/
Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law – reg.

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act. Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of CGST Act in this context has been examined in the following paragraphs.

2. “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a “supply” within the meaning of the Act. The said expression has following three limbs: -

(a) Agreeing to the obligation to refrain from an act-

Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

(b) Agreeing to the obligation to tolerate an act or a situation-

This would include activities such as a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

(c) Agreeing to the obligation to do an act-

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

3. The description “*agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act*” was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

3.1. Some of the outstanding examples of such cases are Service Tax/GST demands on –

- (i) Liquidated damages paid for breach of contract;
- (ii) Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;
- (iii) Cheque dishonour fine/penalty charged by a power distribution company from the customers;
- (iv) Penalty paid by a mining company to State Government for unaccounted stock of river bed material;
- (v) Bond amount recovered from an employee leaving the employment before the agreed period;
- (vi) Late payment charges collected by any service provider for late payment of bills;
- (vii) Fixed charges collected by a power generating company from State Electricity Board for supply of electricity under a power purchase agreement which requires the power generation company to sell entire power generated from its plant to State Electricity Board or sell to any other entity only with the permission of State Electricity Board, referred to by Ministry of Power;
- (viii) Cancellation charges recovered by railways for cancellation of tickets, etc.

In some of these cases, tax authorities have initiated investigation and in some advance ruling authorities have upheld taxability.

4. In Service Tax law, ‘Service’ was defined as any activity carried out by a person for another for consideration. As discussed in service tax education guide, the concept ‘activity for a consideration’ involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an ‘activity for consideration’. The element of contractual relationship, where one supplies goods or services at the desire of another, is an essential element of supply.

5. The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act in para 5 (e) of Schedule II of CGST Act is strikingly similar to the definition of contract in the Contract Act, 1872. The Contract Act defines 'Contract' as a set of promises, forming consideration for each other. 'Promise' has been defined as willingness of the 'promisor' to do or to abstain from doing anything. 'Consideration' has been defined in the Contract Act as what the 'promisee' does or abstains from doing for the promises made to him.

6. This goes to show that the service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

6.1 A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises of the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act. All the three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of the said entry. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate and act or a situation or (c) to do an act and further some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand- alone contract or may form part of the same contract. . Such activity of (a) refraining or (b) tolerating or (c) doing must not merely be part of a built-in penal arrangement to prevent non-performance or breach of another contract. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Agreement to do or refrain from an act should not be presumed to exist

7. There has to be an express or implied agreement; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist. An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation. Payments such as liquidated damages for breach of contract, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonour etc. are not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation and to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract: (a) for breach thereof, or (b) for holding more stock than permitted under the mining contract, or (c) for leaving the employment before the agreed minimum period or (d) for

doing something leading to the dishonour of a cheque. As has already been stated, unless payment has been made for an independent activity of tolerating an act under an independent arrangement entered into for such activity of tolerating an act, such payments will not constitute 'consideration' and hence such activities will not constitute "supply" within the meaning of the Act. Taxability of these transactions is discussed in greater detail in the following paragraphs.

Liquidated Damages

7.1 Breach or non-performance of contract by one party results in loss and damages to the other party. Therefore, the law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.

7.1.1 It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as liquidated damages. Black's Law Dictionary defines 'Liquidated Damages' *as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.*

7.1.2 Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

7.1.3 It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not retribute the aggrieved person. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

7.1.4 In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to do or abstain from doing anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

7.1.5 Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc. Other examples that may be covered here are the penalty stipulated in a contract for delayed construction of houses. It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers. Similarly, forfeiture of earnest money by a seller in case of breach of ‘an agreement to sell’ an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a ‘supply’ within the meaning of the Act, otherwise it is not a “supply”.

7.1.6 If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a “consideration” cannot be considered *de hors* an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the ‘object’, as such, of the contract then it cannot be considered ‘consideration’. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.

Compensation for cancellation of coal blocks

7.2 In the year 2014, coal block/mine allocations were cancelled by the Hon’ble Supreme Court vide order dated 24.09.2014. Subsequently, Coal Mines (Special Provisions) Act, 2015 was enacted to provide for allocation of coal mines and vesting of rights, title and interest in and over the land and mines infrastructure together with mining leases to successful bidders and allottees. In accordance

with section 16 of the said Act, prior (old) allottee of mines were given compensation in the year 2016 towards the transfer of their rights/ titles in the land, mine infrastructure, geological reports, consents, approvals etc. to the new entity (successful bidder) as per the directions of Hon'ble Supreme Court.

7.2.1 There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation not under a contract between the allottees and the Government but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government for such cancellation in pursuance to the order of the Supreme Court was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.

Cheque dishonor fine/ penalty

7.3 No supplier wants a cheque given to him to be dishonoured. It entails extra administrative cost to him and disruption of his routine activities and cash flow. The promise made by any supplier of goods or services is to make supply against payment within an agreed time (including the agreed permissible time with late payment) through a valid instrument. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty. The fine or penalty that the supplier or a banker imposes for dishonour of a cheque is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable. It is a mere flow of money.

Penalty imposed for violation of laws

7.4 Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable, which are also not taxable. Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit. Such penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration. The service tax education guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties.

7.4.1 It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, by-laws, rules or regulations are not leviable to Service Tax. The same holds true for GST also.

Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

Compensation for not collecting toll charges

8. In the wake of demonetization, NHAI directed the concessionaires (toll operators) to allow free access of toll roads to the users from 8.11.2016 to 1.12.2016 for which the loss of toll charge was paid as compensation by NHAI as per the instructions of Ministry of Road Transportation and Highways. The toll reimbursements were calculated based on the average monthly collection of toll. A question arose whether the compensation paid to the concessionaire by project authorities (NHAI) in lieu of suspension of toll collection during the demonetization period (from 8.11.2016 to 1.12.2016) was taxable as a service by way of agreeing to refrain from collection of toll from users.

8.1 It has been clarified vide Circular No. 212/2/2019-ST dated 21.05.2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed. No tax was accordingly payable on such payment as toll did not attract tax.

Late payment surcharge or fee

9. The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc. Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally

bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonor fine or penalty as discussed in the preceding paragraphs.

Fixed Capacity charges for Power

10. The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a month. They take care of the fixed cost of generating/supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed.

10.1 The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

10.2 Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements; the contract is essentially for supply of electricity.

Cancellation charges

11. A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. The supplier may allow cancellation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract. In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.

11.1 It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. Cancellation fee can be considered as the charges for the costs involved in making arrangements for cancellation of supply, such as cancellation of reserved tickets by the Indian Railways.

11.2 Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred

seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

11.4 Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

11.5 However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

12. Field formations are advised that while the taxability in each case shall depend on facts of that case, the above guidelines may be followed in determining whether tax on an activity or transaction needs to be paid treating the same as service by way of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

13. Any difficulty in implementation of the circular may be brought to the notice of the Board.

Yours Sincerely,

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Annexure-IVA

(Recommendations of Fitment Committee on issues related to Tour and hospitality Sector)

A Existing rate structure and place of supply provisions

(I) On tour operators

a. GST rate

5% without ITC (but ITC of input services in the same line of business is allowed) subject to the **condition** that the amount charged for the tour operator services must include charges for accommodation and transportation both.

Or

18% with ITC

[Refer S. No. 23 of notification No. 11/2017-CT(R)]

b. Place of supply of service of tour operator:

For domestic supplies: Location of recipient [default rule]-Section 12 of the IGST Act, 2017.

For international supplies:

(i) The location where services are actually performed (location of physical presence)-Section 13(3)(b) of the IGST Act, 2017.

(ii) If service is provided both in taxable and non-taxable territory (say a composite tour of India and Nepal) the place of supply of service is India for whole service by virtue of section 13(6) of the IGST Act, 2017.

(II) Hotel accommodation services:

a. GST rate:

Nil upto a rent of Rs 1000 per day

12% (Rent>Rs1000 ,<=7500)

18% (Rent>Rs 7500)

[Refer S. No. 7 of notification No.11/2017-CT(R), and S. No. 14 of notification No.12/2017- CT(R))

b. Place of Supply of service: Location of hotel [in all scenarios - domestic as well as international supplies- (section 12(3) and 13(4) of the IGST Act, 2017 refers)

(III) Restaurant services:

a. GST rate:

5% without ITC in all cases except restaurants within hotels where room tariff is higher than Rs 7500.

18% - specified premises (restaurants within hotels where room tariff is higher than Rs 7500)

[Refer S. No. 7 of notification No. 11/2017-CT(R)]

b. Place of Supply of service: Location where services are actually performed, i.e. location of the restaurants [section 12(4) and 13(3)(b) of the IGST Act, 2017 refers]

(IV) Passenger Transport services:

a. GST rate:

By road	5% without ITC (except ITC of input service in the same line of business); 12% (with ITC)
By rail (AC or First Class)	5% (with ITC of input services) <u>Exempt</u> other than AC or first class
By Air	Economy 5% (with ITC of input services) Business 12% (with ITC) <u>Exempt</u> To or from NE States and RCS airports
By inland waterways	Exempt
By sea including cruise ships	18%

[Refer S. No. 8 of notification No. 11/2017-CT(R), and S. No. 15, 16 and 17 of notification No.12/2017- CT(R))

b. Place of Supply of service:

For domestic supplies:

- (i) Supply to registered person – location of such person
 - (ii) For unregistered person – place where the passenger embarks on the conveyance for a continuous journey.
- (section 12(9) of the IGST Act, 2017 refers)

For international supplies:

Place where the passenger embarks on the conveyance for a continuous journey. (section 13(10) of the IGST Act, 2017 refers)

B. Issues and request by tour operators

The rate structure and place of supply as above leads to a situation that 18% with ITC is not a viable option and hence most tour operators pay GST at the rate of 5% without ITC. The tour operators have been arguing that effective GST tax rate on tour operators is very high. The issues raised are discussed below.

(a) Issue

PoS of hotel accommodation is the location of the hotel. As a result, tour operators are not able to take ITC of GST paid on hotel accommodation in the outside their States. Similarly, they may not be able to take ITC of transport services and restaurant services in many instances in view of place of supply thereof. The tour operators have requested that they should be facilitated ITC of all goods and input services including the hotel

accommodation service if standard rate is to apply.

Request

For this purpose, PoS of hotel accommodation service may be suitably changed.

Alternatively,

They may be charged GST @ 1.8% without ITC on the gross value charged by them. Tour operators have stated that they work on a margin of 10%. Hence GST @18% on 10%.

(b) Issue:

Services supplied by tour operators to foreign tourists in India against payment in foreign exchange do not qualify as exports and attract GST. This is because PoS of tour operator service is the place where the service is performed.

The 288th Report of the Department Related Parliament Standing Committee on Transport, Tourism and Culture on demands for grants (2021-22) has recommended that *“in order to enhance export competitiveness of Indian tourism as also to provide relief to the tourism and hospitality sector, the payments received by all the tourism and hospitality entities in convertible foreign exchange be considered as deemed export and be exempted from GST and the concept of zero-rating also be applied to tourism foreign exchange earnings”*.

The tax charged on tour operator services by competing countries like Thailand, Singapore, Maldives and other South East Asian countries is much lower as compared to India. This makes the Indian tour packages less competitive as compared to tour packages in countries like Thailand and Singapore where the GST rates are lower at 7%. Industry has requested that the tour operator services supplied to the foreign tourists in India may be treated as exports/deemed exports.

Request:

Service provided to a foreign tourist be treated as exports [at least where it is against foreign exchange receipt]

(c) Issue:

Tours having a foreign component and an Indian component are taxed as if the entire tour happened in India in view of the PoS provisions.

Request:

Foreign component may be exempted.

(d) Issue

Reduce GST on private ferry tickets at Andamans:

The industry has represented that presently GST @ 18% is applicable on

private ferry tickets in Andamans as per cruise GST rate. The ferry is not luxury ferry or cruise but it is a means of transport. These are normal AC transport ferries. There is no other way of transportation to reach from one island to another island and is the only source of connectivity between small islands and Port Blair.

C Facts and Analysis

- The PoS of hotel accommodation service is the State where the hotel is located. As a result, a tour operator, say registered in Delhi is not able to take ITC of Maharashtra State GST paid on hotel accommodation in Maharashtra. This PoS provision in the Indian GST law is not in harmony with the international practice. As per International VAT/GST guidelines, 2015 brought out by OECD in the context of cross-border trade, place of B2B supply of hotel accommodation service is the location of the recipient.
- The PoS of tour operator service is the place where the tour is performed (Section 13 (3) of IGST Act, 2017 refers). This PoS provision is in harmony with the international practice. In Singapore, Australia, EU etc the PoS of B2C supply of tour operator service is the place where the tour is conducted. Accordingly, these countries do not treat tour operator services supplied to a foreign tourist as zero rated.
- GST charged on tour operator services by Thailand and Singapore is 7%. They are major competitors of India in tourism sector.
- The Travel and Tourism Competitive Index, 2019 places India at an overall rank of 34 but at a much lower rank of 118 when evaluated on the basis of total taxes paid by this sector [Travel and Tourism Competitive Index, 2019 published by World Economic Forum, <https://reports.weforum.org/travel-and-tourism-competitiveness-report-2019/rankings>]
- The proposal to change PoS of B2B supply of hotel accommodation service was taken to the GST Council. However, the same was not agreed to in view of competing arguments of revenue to states where services are performed.

D Options available for resolving the above issues

1. PoS of hotel accommodation service

- Change PoS of B2B supply of hotel accommodation service, transport services and restaurant services from the existing rule to the default rule (location of recipient). This would require change in law and hence a long process.

Alternatively,

- **Allow tour operators a margin scheme, as an alternative option**, under which they may pay GST on value arrived at on deemed basis [certain % of gross tour cost] that represent their fair competitive margin no ITC is availed on any input and input services. Margin scheme would be allowed where tour is all inclusive or includes either the hotel accommodation or transport. This will make the tax incidence on tour operator competitive.

2. Tours conducted partially in India and partially outside India

- The POS provision in section 13(6) of IGST Act, 2017, as far as tour operator service is concerned, maybe aligned with Explanation to section 12(7) of IGST Act, 2017. Or
- Considering the genuineness of the issue, and also taking into account that foreign component is actually performed outside India, for excluding the proportionate value of the foreign component of the tour.
- To avoid disputes/ misuse, we may prescribe valuation of the foreign and domestic components of such composite tours based on the proportion of the number of nights for which tour was conducted outside and within India. To ensure that balance remains in favour of domestic tourism in such composite tours, we may prescribe that this concession shall be provided for say maximum of half of the duration of the tour or actual period whichever is less.

3. GST on private ferry tickets at Andamans:

Sr. No 17 (d) of said notification No. 12/2017-CTR dated 28.06.2017 exempts “transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India”.

We may clarify that this exemption would apply on tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government. The expression ‘public transport’ used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

4. Export status to tour operator service supplied to foreign tourists against foreign exchange by way of tours conducted in India.

Such services are not treated as exports internationally. Margin scheme would address the concern of tour operators. A reasonable margin scheme will reduce the burden of tour operators.

Recommendation of Fitment Committee:

1. In principle approval of GST Council may be obtained for formulating a Margin Scheme for Tour Operators. Once approval is given by the council, the scheme shall be worked out by Fitment Committee after consultation with stakeholders.
2. In principle the Council may approve that in case of tours conducted for foreign tourists partially in India and partially outside India, proportionate value of the foreign component of the tour may be excluded from the value for the purposes of payment of GST. To ensure that balance remains in favour of domestic tourism in such composite tours,

we may prescribe that this concession shall be provided for say maximum of half of the duration of the tour or actual whichever is less. Once in principle approval is given, the exact methodology would be worked out by Fitment Committee after consultation with tour operators.

3. **It may be clarified by way of circular that exemption at Sr. No 17 (d) of notification No. 12/2017-CTR dated 28.06.2017 [which exempts “*transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India*”] would apply on tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government. The expression ‘public transport’ used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.**

Annexure-IVB

(Recommendations of Fitment Committee on positive list of services to be specified in Sr. No. 3/3A of Notification No. 12/2017-CT(R))

By way of background, it is stated that the entries at Sr. No. 3 and 3A of exemption notification number 12/2017-CT(R) dated 28.06.2017 exempt supply of pure services and composite services (goods component 25% or less) supplied to Government, Local Authority, Governmental Authority or Government Entity by way of any activity in relation to Municipal or Panchayat functions.

2. Post the amendments made with effect from 1.1.2022, the entries read as below:

Entry 3 of Notification No. 12/2017- CT(R) :

“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 by way of any activity in relation to 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.”

Entry 3A of Notification No. 12/2017- CT(R):

“Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to 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.”

3. With reference to these entries, the following a proposal placed before the GST Council in the 45th Council meeting held on 17.09.2021 was that the entries were being interpreted too widely, the issue as to the scope of the term “in relation to” appearing in the said entries was placed the Fitment Committee and GST Council. The Fitment Committee recommended that as the scope of the

expression “in relation to” used in the said exemption entries is too wide and prone to interpretation disputes, a list of services may be specifically notified as exempt under the said entries.

[Agenda No 14, Annexure IV, Sl. Nos. 25 of 45th GST Council may please be seen]

4. In Service Tax regime, since the intent of the exemption was to exempt only the services directly connected with the functions carried out by Government and local authorities of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation, the relevant entry 25 of Notification No. 25/2012- Service Tax read as:

“Services provided to Government, a local authority or a governmental authority by way of-

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation;”

5. During discussion on this issue, in the 45th meeting Council was of the view that while the approach to specify a positive list of exempt services was agreed to, the list recommended by Fitment Committee needs to be pruned and refined. It was agreed that the list of services shall be circulated to all states for their inputs for refining the list which may be brought before GST Council for approval.

6. Accordingly, as per the direction of the Council, the List was circulated to States vide email dated 22.11.2022. Comments were received from West Bengal, Bihar and Tamil Nadu.

7. The issue was discussed at length in the Fitment Committee. After long deliberation the Fitment Committee was of the view that the exemption under said entries should confine to those services which are directly connected with the functions entrusted to Panchayat or Municipality and not services remotely or vaguely connected with those functions. Further, it was felt that only few services constitute bulk of input services by the local authority. Hence the List could be pruned down significantly while ensuring that major services by these bodies remain exempted. This approach would ensure that exemption entries are not interpreted widely, local authority continue to have major relief on supply of input services, and in respect of other general services the normal design of GST could be applied. Fitment Committee also felt that in respect of purchase of goods no special concession is allowed to procurement by Government or Local Authority. They suffer same incidence on goods as any private person (for example cement, iron and steel, vehicle, furniture etc). In service, the special concession crept in as services were taxed differently in pre-GST regime wherein tax was only imposed by Centre and there was no VAT on services. However, In GST there should not be any appreciable difference in the approach for goods and services. As is the case in goods, the Government and Local Authority should also bear the normal rate of GST on input services barring exceptions. Accordingly, Fitment Committee carved out a positive list of services for consideration of the Council.

8. With this positive List approach, it was also felt that the authorities constituted by in different states for such civic work as fall in the proposed positive list should also be included in the ambit of these exemptions alongside the local authority.

Recommendation of Fitment Committee:-

I. The following list of services may be specified in Sl. No. 3/3A of Notification No. 12/2017-CT(R) dated 28.06.2017 :

Supply of **pure services**, or **composite supply of goods and services, in which the value of goods constitutes not more than 25% of the value of composite supply**, to Central Government, State Government, Union territory, a local authority or a **public authority** by way of ,-

- 1) Water treatment and/or supply
- 2) Public Health activities, Sanitation Conservancy and Solid or Liquid Waste management
- 3) Slum Improvement and Up gradation
- 4) Maintenance and operation of street lights, bus stops, public conveniences, public parks and gardens, burial ground and crematorium.
- 5) Renting of motor vehicles for carrying out functions listed at Sr. No. 1 to 4 above.
- 6) Supply of manpower services for carrying out functions listed at Sr. No 1 to 4 above.

II. Public authority may be defined as under:

“Public Authority” means an authority or a board or any other body established by the Government to carry out the functions listed in S. No. 1 to 4 of the entry.

e) Issues where no change has been proposed by the Fitment Committee in relation to services - Annexure V.

Annexure-V

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
1.	Option to developers to choose GST on commercial projects - @ 12% with ITC or 5% without ITC.	GST is levied @ 12% on Commercial projects with ITC benefits.	GST on real estate was decided by GST Council after due deliberation and following due process. No change recommended.
2.	Transfer of development rights, long term lease akin to sale of land.	The promoter/developer of such project is to pay GST at the rate of 18% on the value of the Development rights/lease premium (limited to 1% on the value of the apartment for affordable apartments & 5% for other than affordable apartments) on the units remaining unsold at the time of issuance of occupancy certificate (OC) or first occupation under reverse charge.	1.A supply of service is taxable if two conditions are fulfilled, - i. There must be a supply of service by the service provider to service recipient and ii. Service recipient pays a consideration in cash or kind to the service provider. 2. In case of transfer of development right (TDR) by a landowner to a developer/ builder, both the above two conditions get fulfilled. Land owner allows the builder to develop and construct on his land without transferring the ownership or title of land and receives as consideration from the builder either money or constructed apartment as per the terms and conditions of the agreement, and constitutes a supply under section 7 of the CGST Act, 2017. 3. TDR was taxable in-Service Tax regime also. With introduction of Goods and services tax, CGST is levied on TDR by virtue of notification No. 11/2017-CT(R) dated 28.06.2017. No change recommended.
3.	Request to exempt External	1. EDC and IDC contribute to Government funding for developmental needs, GST or	EDC/IDC are not taxes but charges or fee payable to the Government by

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
	Development charges and Infrastructure Development Charges	<p>other charges should not be charged on EDC/IDC.</p> <p>2. With reference to Section 7(2)(b) of the CGST read with Article 243W of Constitution of India and RERA Act, 2016, imposition of GST will amount to Double taxation.</p> <p>3. GST on EDC and IDC is not applicable, since it is a government due not a consideration for supply of goods and services.</p>	<p>builders/developers against service supplied by the Government in the form of granting them permission/licenses.</p> <p>Hence these are liable to GST.</p> <p>Request for exemption may not be agreed to.</p>
4.	Valuation of Land may be prescribed by state authorities on the basis of pin code, area etc.	The value of land may have huge variation from one place to the other. In certain areas of the metro cities, the value of land may run up to 80% of the total amount charged while in the smaller developing areas, it can be as low as 15% of the total amount charged. So, there can be a huge under or overvaluation of the amount to be charged as GST.	<p>Section 15(5) of CGST Act, 2017 empowers Government to notify supplies the value of which will be determined in the manner as prescribed. Accordingly, modalities of valuation have been prescribed, exercising this power, on the recommendations of the Council.</p> <p>This matter has been litigated in the courts and is sub-judice. No action proposed by the Fitment at this stage.</p>
5.	Reduction of GST rate on rental Materials of scaffolding and centering materials from 18% to 4%.	The building contractor can execute more and more projects and will also create more employment opportunities and more housing to the public.	<p>Such reduction of rate may create inversion of duty structure and impact revenue as well.</p> <p>Request may not be accepted.</p>
6.	Reduction in GST rates from 18% to 12% for private construction projects.	Similar to Govt. contractors, the GST rate on all private projects carried out through works contracts by private contractors may also be reduced to 12% from existing 18% which will give huge boost to the construction industry in these Covid pandemic difficult times.	<p>The GST rate structure for real estate has evolved with extensive deliberation in GoM and the Council.</p> <p>Therefore, status quo should be maintained.</p>
7.	Reducing/waiving the GST on brokerage services	The heavy percentage of 18% on brokerage services and 12% on purchase of property is becoming out of reach for the common	Exempting the services would lead to blockage of ITC of the agents and would eventually lead to increase in

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
	on sale and purchase of property.	man of the nation and is making real estate a farfetched dream for a lot of people.	cost of services provided. Brokerage is a pure professional service and hence standard rated. No change recommended.
8.	GST rate in respect of onshore works contract within 12 nautical miles may be reduced to 12%.	CGST rate on works contract in offshore area beyond 12 nautical miles is 12%.	Rate of GST on works contract services in the offshore area beyond 12 nautical miles procured by E&P sector was reduced to 12% in view of the fact that in pre-GST regime, VAT was not levied on goods component of the offshore works contracts; only service tax was levied on service component. There is no justification for reduction of GST rate on onshore works contract services which were levied to both service tax and VAT in the pre-GST regime. No change recommended.
9.	Request to exempt GST on site restoration activities.	Such activities are primarily for protection of environment and restoration of water bodies. Since crude oil is outside GST, ITC of GST paid on such activities is not available.	Request is for new exemption. Exemptions block ITC chain and distort tax structure. No change recommended.
10.	Request for exempting services by way of drilling bore wells for water supply to produce any agricultural produce by a Farmer.	The activities undertaken by the way of drilling of bore wells for the supply of water relating to production of any agricultural produce by a farmer is inclusive in nature for the agricultural operations and support services and exempted clearly by the legislature from the purview of service tax regime and thus GST regime.	This is a new exemption request. Not much rationale for exemption. Exemptions block ITC chain and distort tax structure. Earlier also, similar request was not acceded to by the Council in its 31 st meeting held on 22.12.2018. No change recommended.
11.	Removal of GST on Life & Health	Life Insurance: The GST 18% imposed is of 3 types. One is GST on Insurance Risk premium. Second, GST is collected on late	This is a new exemption request. Exemption/lowering GST rate will lead to cascading of input taxes and result in

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
	Insurance	<p>fee and delayed loan interest paid due to delay in payment of premium and interest in time. This is unfortunate. Thirdly, GST is imposed on Annuity policies which doesn't contain any risk premium. GST is not collected on investment in Banks, Post office savings schemes etc.</p> <p>Health Insurance: 18% GST on Health Insurance policies is hampering the penetration which is the need of the day. If one wants to invest Rs. 1 lakh per year for Health insurance his premium would be Rs. 1,18,000/- every year. This huge amount of GST is discouraging the prospect not to go for Health insurance. Health insurance Policies should be GST free.</p>	<p>distortion of tax structure.</p> <p>No change recommended.</p>
12.	Reduce GST on term insurance premium.	GST premium on life insurance is charged at 4.5% in the first year and at 2.25% in the subsequent years and the policy holder or nominee gets benefits. However, in case of term insurance where the policy is in force for several years, the GST is charged on the premium at 18%.	<p>This is a new exemption request. Exemption/lowering GST rate will lead to cascading of input taxes and result in distortion of tax structure. Further, providing exemption or special rates for a particular user group or a particular type of insurance cover goes against the basic principles of GST. It also has revenue implication.</p> <p>Moreover, the request was also placed before GST Council, in its 37th meeting, where it was not acceded to by the Council.</p> <p>No change recommended.</p>
13.	Exempt GST on personal line of insurance.	GST on insurance based on personal lines like medi-claim, householder's policy, personal accident policy may be withdrawn as most of the insured are paying tax on their income. GST is an added expenditure.	<p>This is a request for new exemption. Exempting GST on a particular line of insurance would be against the fundamental tenets of GST and ITC on inputs would stick as cost to insurers.</p> <p>Request may not be accepted.</p>

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
14.	To exempt GST on third party insurance for commercial vehicles (18/12 % to 0)	<p>The mandatory third-party premium on heavy goods vehicles has been abnormally increased over past few years and is high though the category wise share of accidents from trucks as per Ministry's data is far less.</p> <p>No ITC for GST is claimed by majority of truck operators.</p> <p>Data reveals that majority of privately owned 2/3/4 wheelers are not getting the insurance renewed.</p> <p>On one hand 3rd party insurance is mandatory for vehicle owner, on the other hand GST is high, which is causing difficulty.</p> <p>It is requested to save the road transport sector by easing a bit of its financial burden and this request of exempting commercial vehicles insurance premium from GST should be considered to pass on the relief.</p>	<p>Motor third-party insurance or third-party liability cover, is a statutory requirement under the Motor Vehicles Act. It is referred to as a 'third-party' cover since the beneficiary of the policy is someone other than the two parties involved in the contract (the car owner and the insurance company). The policy does not provide any benefit to the insured. However, it covers the insured's legal liability for death/disability of third-party or loss or damage to the third-party property.</p> <p>As per S. No. 15(vi) of notification No 11/2017-CTR dated 28.06.2017, GST rate of 12% is applicable on the premium of third-party insurance of goods carriage at present w.e.f. 1.1.2019. It was conscious decision of the GST Council to reduce it from 18% to 12%. Further reduction in GST will result in revenue loss, and distort the ITC chain</p> <p>Earlier, similar request to reduce the GST on third party insurance was not acceded to by the Council in its 37th meeting.</p> <p>In view of the above, the request to reduce the GST rate for the said service may not be accepted.</p>
15.	Exempt GST on general micro-insurance on the lines of life micro insurance.	At present, life micro insurance products having sum insured upto 2 lakhs are exempt from GST [sl no 36(c) of notification No. 12/2017 CTR dated 28.06.2017 refers]. Such exemption is not available for micro insurance products offered by general and standalone health insurers. Micro insurance, whether life or general/health, serves a class of people having similar economic profile.	<p>As per IRDA website, a general micro-insurance product is any:</p> <ul style="list-style-type: none"> ▪ Health insurance contract ▪ Any contract covering belongings such as hut, livestock, tools or instruments ▪ Any personal accident contract that can be on an individual or group basis

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			<p>Sl.No.35 of 12/2017-CTR already provides exemption to the general insurance schemes which fit the description of micro insurance products such as Hut Insurance Scheme; Janata Personal Accident Policy and Gramin Accident Policy; Jan Arogya Bima Policy; Universal Health Insurance Scheme; Rashtriya Swasthya Bima Yojana; Coconut Palm Insurance Scheme; Pradhan Mantri Suraksha Bima Yojna etc. The schemes which were exempt under service tax continue to be exempt under GST.</p> <p>It is relevant to mention in this context that LIC has requested for withdrawing exemption on their schemes as it requires them to reverse ITC and they suffer a loss due to such reversal particularly in case of related party transactions, which they did not suffer in service tax period.</p> <p>Therefore, there may not be much merit for giving a blanket exemption on all general micro insurance products.</p> <p>No change recommended.</p>
16.	Reduce GST on insurance of dwelling units.	<p>Premium paid on insurance of dwelling units is chargeable to GST @ 18%. There is very little awareness among the general public on the need to insure their dwellings though the premium payable is very small.</p> <p>In times of natural catastrophe, the Central and State governments have had to give relief to citizens who are affected, however,</p>	<p>This is a new exemption request. Exemption/lowering GST rate will lead to cascading of input taxes and result in distortion of tax structure.</p> <p>It will also necessitate ITC reversals which will also increase compliance burden on part of the insurance companies and also increase cost of</p>

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		with insurance, the insurers would have been able to pay for the loss of their homes in the midst of such natural disasters and crisis.	output services to the consumer. No change recommended.
17.	(a) Exempt GST on premium payable on group insurance policy for senior citizens. (b) Reduce GST on health insurance premium for senior citizens.	(a) This would help increase access of health insurance to senior citizens. (b) Out of Pocket expenditure on healthcare is 58.7% of total health expenditure in India. Studies indicate that senior citizens are some of the most under insured groups with only 15% health cover buyers in the age group of 60-80. (c) Presently a standard 18% is applied on insurance premium and raises the overall cost to senior citizens. As the age of the insured gradually increases, the cost of financial protection from medical risks also increases. (d) Medical insurance has become a necessity and GST @ 18% makes it expensive.	(a) Request for new exemption. The same was taxable in service tax regime too. Further, the request has already been rejected in 31 st and 37 th GST Council Meeting. (b) Exemption/lowering GST rate will lead to cascading of input taxes and result in distortion of tax structure. Request may not be accepted.
18.	Exempt GST on life insurance service provided by way of annuity under Pension Schemes regulated by insurers other than PFRDA	Finance Act, 2016 has exempted the service of life insurance business provided by way of annuity under the NPS regulated by PFRDA w.e.f. 01.04.2016. However, no such exemption has been extended to Annuity under the pension schemes of LIC and other life insurers. GST is levied on premiums paid for pension products at the applicable rates. After the accumulation stage, when the customer has to opt for an Annuity product for receiving the annuity post the investing period, GST is again levied on the accumulated savings which is invested in buying the annuity, thereby affecting the returns and the quantum of annuity received by the customer.	This is a new exemption request. Exemption/lowering GST rate will lead to cascading of input taxes and result in distortion of tax structure. Earlier, similar request was not acceded to by the Council in its 37 th meeting held on 20.09.2019. No change recommended.

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19.	Waive GST on Annual Premium of group medi-claim insurance scheme for bank retirees	The Annual Premium of group medi-claim insurance scheme for bank retirees has become unaffordable in the recent years.	<p>Exemption/lowering GST rate will lead to cascading of input taxes resulting in increase in the cost of output services to the consumers resulting in distortion of tax structure.</p> <p>Further, providing exemption or special rates for a particular user group or a particular type of insurance cover goes against the basic principles of GST.</p> <p>No change recommended.</p>
20.	Clarification may be issued by the GST Council/CBIC exempting the reinsurance services of the specified insurance schemes from payment of the GST liability for the period from 1st July 2017 to 24/01/2018 in order to align it with the exemption available to reinsurance service earlier during erstwhile service tax regime and now under GST regime from 25/01/2018 onwards.	<p>For the period prior to 1st July 2012, the government had issued Notification Number 3/94 dated 30/06/94 and a Circular to include re-insurer within the purview of the term insurer.</p> <p>Post 1st July 2012, a Notification Number 25/2012-ST dated 20.06.2012 was issued. Sr. No. 26 of this Notification exempted services concerning general insurance business provided under certain specified schemes.</p> <p>The aforesaid notification stated that the general insurance business has the same meaning as assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalization) Act, 1972 (57 of 1972).</p> <p>Section 3(g) of the General Insurance Business (Nationalization) Act, 1972 defines “general insurance business” as under:</p> <p><i>“general insurance business means fire marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them, but does not include capital redemption business and annuity certain business;”</i></p>	<p>1. There was no exemption on services of re-insurance in Service Tax period.</p> <p>2. In 25th GST Council meeting held on 18.01.2018, it was decided to exempt re-insurance services in respect of services related to insurance schemes already exempt under S. Nos. 35 and 36 of notification No. 12/2017-CT (Rate). The exemption is prospective w.e.f 25.01.2018.</p> <p>The request for retrospective exemption from GST on re-insurance services is untenable.</p> <p>3. While insurance service is provided by an insurance company to a policy holder, service of re-insurance is provided by re-insurance company to the insurance company. Therefore, re-insurance service is an input service of the insurance company.</p> <p>4. It was a conscious decision of Council to grant prospective exemption to such re-insurance services.</p> <p>No change recommended.</p>

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		<p>The term “general insurance business” as defined above specifically excludes capital redemption business and annuity certain business but does not exclude reinsurance service business. Since the general insurance business does not exclude reinsurance from its ambit, the aforesaid definition of the general insurance business is wide enough to cover even reinsurance business within its scope and under its purview.</p> <p>In line with the Service Tax regime and to carry forward similar exemption/benefit to the insurance/reinsurance industries, an identical exemption has been provided in the GST regime vide Entry no. 35 of Notification Number 12/2017 - Central Tax (Rate) dated 28/06/2017.</p> <p>The insurance service is a contract under which the insurer indemnifies the insured against certain contingencies and assumes the risk. Reinsurance is nothing but an insurance service received by insurance companies whereby a part or whole of the risk assumed by an insurance company is passed on to the reinsurance companies.</p> <p>Since the re-insurance policy is in the nature of sharing of risk assumed under various insurance policies, the re-insurance services in respect of such exempted policies covered under the schemes would fall under the purview of exemption under the aforesaid Notification.</p> <p>The reinsurance service provided to insurance companies is a part and parcel of the same activity provided by the insurance company to the farmers. No GST is required to be paid on supply of such reinsurance services as the said reinsurance services are required to be provided in relation to the insurance policies which are exempted from payment of GST under the</p>	

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		Notification Number 12/2017 CT(Rate) as amended.	
21.	To exempt GST on premium collected from banks by Deposit Insurance & Credit Guarantee Corporation (DICGC) for deposit insurance.	<p>DICGC was established as a statutory body in 1961 to provide safety net to depositors in the event of liquidation of banks by paying upto Rs 5 lakhs (as amended) per depositor as deposit insurance claims.</p> <p>DICGC covers all commercial banks, cooperative banks to safeguard financial stability as a public good and it is engaged in discharging liability from pooled funds to the affected depositors</p> <p>It was brought under General Insurance Business (Miscellaneous insurance) since 2008. Further, after 2021 amendments, depositors can access their deposited money to the extent of the deposit covered under insurance by way of interim payments by DICGC.</p> <p>All services rendered by RBI are exempt from GST payment and DICGC is a wholly owned subsidiary of RBI and, it may also be given exemption.</p> <p>General insurance service is not DICGC's core business.</p>	<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 pay GST on their services.</p> <p>Further, the nature of work of DICGC differs from RBI.</p> <p>The recipient of service of DICGC could avail ITC on such services.</p> <p>No change recommended.</p>
22.	To waive GST payment for minimum 3 quarters for all the transport operators	The transport sector is adversely affected due to various reasons like Diesel Prices, Toll Fees, Steep hike in Taxes, RTO Expenses, interstate taxes etc. The problems have been further aggravated by Covid 19 pandemic.	<p>This is a new exemption request. The Covid -19 pandemic has affected all sectors. Exemption/lowering GST rate will lead to cascading of input taxes and result in distortion of tax structure.</p> <p>Request may not be accepted.</p>
23.	The GST should be applicable only on hire charges & not on the total gross invoice value i.e., excluding the	Currently, the GST applicable on the total invoice value which includes vehicles hire charges + toll taxes + inter-state taxes & parking fee. In certain cases (see example below) the tax component put together amounts to 44% of the gross invoice	GST is applicable on the value determined in accordance with section 15 of the CGST Act and this value includes any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than GST

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	amount incurred towards toll taxes + inter-state taxes & parking fee.	amount. This translates that one ends-up paying tax on tax & the whole purpose (double taxation) of introducing GST remains defeated.	Acts, if charged separately by the supplier. No change recommended.
24.	Review the differential taxation rate for transport of containers by rail and other modes of transport, and bring them at par to ensure a level playing field	Services of Goods Transport Agency (GTA) for transportation of goods by road are taxed uniformly at 5% with no Input Tax Credit (ITC). On the other hand, transport of goods in container by rail by any person other than Indian Railway (Container Transport operators, i.e., CTOs) is taxed at 12% with full ITC. This kind of tax differential on transport of containers by rail viz-a-viz road proves to be highly uncompetitive for rail. Full ITC is not sufficient to bridge high-rate gap of 7%. The high-rate gap of 7% tax is driving away the customers from rail to road.	<p>1. CTOs are paying GST @12% with full ITC. GST rate on other goods transport varies as follows:</p> <ol style="list-style-type: none"> For vessels, import freight and coastal transport is taxable at 5% with ITC of services and vessels including bulk carriers and tankers. Transport of goods by inland waterways and export freight is exempt. Domestic transport of goods by air is taxable at 18%, while import and export freight are exempt. Road transport by GTAs and transport of Natural Gas, Petroleum Crude, Motor Spirit, HSD, ATF by pipelines have been given an option of 5% with no ITC or 12% with full ITC. Domestic Multimodal transport is taxable at 12% while international multimodal transport is taxable at the rate applicable for the predominant mode of transport. Disrupting ITC chain is not advisable in a value-added tax. <p>2. As per available data, GST paid in cash by CTOs in FY 2018-19 ranged from 4% to 6%. GTA service suffers GST @ 5% payable in cash under RCM.</p> <p>3. Therefore 12% rate with ITC is not hurting most of the CTOs.</p> <p>4. No change recommended.</p>
25.	Services of transportation of fertilizers by road through a GTA or by rail be exempted	Fertilizer industry is facing the issue of huge accumulation of ITC wherein refund of unutilized ITC is not available in respect of input services	Sale of fertilizers is taxable at the rate of 5%. GST on services of transportation of fertilizers by rail or road is available as ITC.

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	from GST.	In erstwhile service tax regime, services of transportation of chemical fertilizer by rail or by road through a GTA were exempt from service tax.	Request may not be accepted
26.	To exempt transportation of dairy products like butter milk, lassi, curd and cattle feed etc. from GST.		<p>Under Service Tax regime also, only transport of milk, salt and food grain including flours, pulses and rice was exempt. Transportation of other dairy products attracted service tax.</p> <p>This is a request for widening of exemption and would invite similar request for transport of many other items.</p> <p>No change recommended.</p>
27.	<p>(a) Reduce the rate of GST on EV charging and battery swapping service to 5% from the current rate of 18%.</p> <p>(b) Exclude the cost of electricity from taxable value while charging GST on EV charging service.</p>	<p>(a)</p> <p>1. Reduction in GST rate will provide the impetus for accelerating adoption of electric vehicles, this is in line with govt policy and initiatives.</p> <p>2. Govt. has already reduced the GST rate on EVs, chargers and charging stations to 5% but operational costs continue to remain high due to 18% GST on charging and swapping services.</p> <p>3. Battery charging and battery swapping essentially achieves same objective as that of EV charger and charging station, they should be taxed at similar rates. NITI Aayog has also recommended the same.</p> <p>(b)</p> <p>1. Supply of electricity is exempt but subjected to electricity duty levied under respective state legislations for which no ITC is available. The cost of electricity constitutes 50% of total cost of EV charging service. Thus, charging GST at 18% on EV charging service, including cost of electricity is not justified.</p>	<p>1.1 The GST Council has already approved reduction of GST rate from 12% to 5% on all electric vehicles and from 18% to 5% on charging stations and hiring of electric buses by municipalities.</p> <p>1.2 Bringing such services to 5% will deepen the inversion. As such, it is a periodic cost, unlike EV which may be one time high cost for user.</p> <p>Request may not be accepted.</p>

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		<p>2. In Goods Transport Agency (GTA), the GST rate has been kept at minimum to exclude the fuel cost from the ambit of GST. Similarly, for EV charging service also, GST rate may be kept at minimum to exclude cost of electricity.</p> <p>3. As per Ministry of Power Circular, the charging station does not require any license under provisions of Electricity Act, 2013 as it is not making sale of electricity nor performing activities of transmission, distribution or trading.</p>	
28.	To reduce GST from current 18% on output service of airport operators to 12%	Infrastructure industry is a thrust sector and affects common man as 18% is charged on output services of Airport Operators. Aeronautical services and user fees should be given preferential treatment and GST rate should be brought down to 12% from current 18%.	<p>There is no rationale for a concessional GST rate on services of airport operators. As it is in most cases recipient could avail ITC.</p> <p>No change recommended.</p>
29.	Suspend payment of IGST on aircraft lease rentals under Reverse Charge mechanism up to 31 st March, 2023.	Airlines pay GST on aircraft lease rentals under RCM and then claim credit against the same for payment of GST liability on passenger tickets. To avoid cash flow problems, it is recommended to put payment of IGST on lease rentals under abeyance.	<p>(i) IGST payable on lease rentals @ 5% is available to airlines as ITC for setting off against their output GST liability.</p> <p>(ii) A number of measures have been taken by the Government to promote setting up of aircraft leasing industry in India. Suspending payment of IGST on lease rentals on aircrafts leased from foreign lessors may adversely affect the domestic aircraft leasing industry.</p> <p>(iii) At the request of MoCA and GIFT SEZ Ltd. necessary changes have recently been made to the GST rate notifications to allow domestic aircraft leasing units in IFSC-SEZ to pay GST on aircraft leasing under forward charge mechanism.</p> <p>(iv) DEA was requested to examine the issue in consultation with GIFT SEZ Ltd and IFSCA. Both IFSCA and GIFT SEZ Ltd are of the view that providing short-term relief to airlines by way of one year exemption or suspension of IGST</p>

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			<p>will put domestic aircraft lessors at a disadvantage. It has been argued that any relief in IGST provided to airline operators under RCM should also be extended to domestic aircraft lessors under forward charge.</p> <p>Status quo recommended.</p>
30.	To reduce GST rate on Air Cargo Services from 18% to 12%.	<p>Post Covid 19 air cargo has become the lifeline for movement of essential goods and commodities including medicines and vaccine etc.</p> <p>In line with low GST rates on movement of cargo through other modes, GST rates on air cargo may be reduced.</p>	<p>Transport of Goods by Air attracts GST at the rate of 18% with full ITC. Prescribing a lower rate with restricted ITC will lead to distortion in tax structure and blocking the ITC chain resulting in increased cost of operations for airlines.</p> <p>In Service Tax regime also, transport of goods by air attracted Service Tax at the standard rate of 15%. The business recipients of goods transportation services are entitled to ITC and therefore it is a pass-through tax.</p> <p>No change recommended.</p>
31.	To have uniform rate of 5% for helicopter charter and sale of seat tickets.	Will make helicopter travel more affordable for common man	<p>Services by way of transport of passengers on seat share basis and that by way of chartering the entire helicopter to a person cannot be equated. The latter is usually consumed by the affluent and not the common man.</p> <p>In Service Tax regime too, chartering of helicopter attracted service tax at the standard rate of 15%.</p> <p>The normal point to point passenger transport on a ticket by a helicopter attract 5% GST. This may also be clarified to remove any doubt.</p>
32.	To reduce GST on all services rendered in relation to helicopters,	GST applicable on MRO services is 5% and GST applicable on MRO hangarage is 18%.	GST rate on MRO services has been reduced from 18% to 5% w.e.f 1 st April, 2020 so as to ease cash flow issues for the MRO and aviation industry at the

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	including rental paid for hangarage to 5%.	No impact on revenue as Helicopter MROs have not yet taken root in India.	request of Ministry of Civil Aviation (MoCA). MROs are entitled to take ITC of all goods and services used by them for supplying the MRO services. Therefore, GST paid on input goods and services by MRO is available to them as ITC and does not become a cost for them. No change recommended.
33.	Request for GST exemption on service provided by roadside vendors for “pollution under control” certificate (PUC) on the vehicles.	18% GST is levied on pollution under control certificate (PUC) on the vehicles provided by roadside vendors which is very high.	Request is for a new exemption. Threshold exemption upto Rs 20 lakhs composition scheme upto Rs. 50 lakhs (@6%) is available. If the service is exempted, the roadside vendor will not be able to avail input tax credit of GST paid on pollution equipment, and other goods and services procured by him to provide PUC on vehicle service. No change recommended.
34.	Request to: a. Issue clarification that the GST rate of 18 % is applicable on job work related to manufacture of alcoholic beverages prospectively w.e.f 01.10.2021 and no demands should be made for the preceding period. b. advise local GST authorities to withdraw notices	The applicable rate of GST on subject services were explicitly introduced for the first time vide notification 06/2021 w.e.f 01.10.2021. As the issue got resolved on account of the recommendations of GST Council meeting in its 45 th meeting. However, there was a doubt on taxability of subject services prior to 01.10.2021. About one third of members were under the bonafide belief that alcoholic liquor for human consumption is ‘food’ and were accordingly paying GST @ 5%, which is the rate applicable on job work services in relation to food and food products.	As decided by the GST Council, in the 45 th meeting alcoholic liquor for human consumption is not food or food products. The 5 % rate of GST prescribed for job work services in respect to food and food products was never applicable on job work services in relation to manufacture of alcoholic liquor for human consumption. Therefore, GST was payable at 18% on job work services in relation to manufacture of alcoholic liquor for human consumption during the period prior to 1.10.2021. No retrospective exemption is merited in this case. No change recommended.

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	issued for payment of difference between 18% and GST already paid for the period preceding 01.10.2021		
35.	<p>1. Job Worker or the Karigar of gold should be exempt from GST. If not, (i) the threshold limit for registration for a job worker may be increased substantially; and (ii) the rate of GST on job work charges may be reduced from 5% to 3%, at par with the supply of gold/jewellery.</p> <p>2. A separate classification entry may be given for repairing/alteration/modification/remaking of articles of jewellery with the rate being 3%. Alternatively, the definition of job work may be changed to include within its ambit the process of repairing/alteration/modification.</p>	The job workers face difficulty in complying with the GST system. They belong to MSME sector and levying of GST puts burden on them.	<p>Small job workers whose turnover is less than 20 lakhs are exempt from taking registration under GST.</p> <p>Beyond the threshold, the gold job work attracts GST at a nominal rate of 5%. It is a pass through tax and jeweller could avail ITC of this service.</p> <p>No change recommended.</p>
36.	Proposal to amend section 13(3)(a) of the IGST Act to	In case the goods are supplied domestically by the foreign customer for job work, the place of supply is considered as the	Requires amendment in law. Further, this affects all the services where delivery of physical goods is required.

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	change place of supply in case of job work services on goods supplied domestically by the foreign customer.	location where the services are actually performed. This leads to export of taxes in cases where such goods after job work are exported.	
37.	The GST rate on dyeing job work may be revised to 12%	<p>GST rate for textiles processing industry was revised from 5% to 12% to be implemented with effect from 01.01.2022. But decision was taken in the 46th GST Council meeting held on 31.12.2021 to maintain the status quo for textiles till further notification in this regard.</p> <p>In this regard, we wish to bring the following to your kind knowledge and take necessary steps to revise the GST rate for dyeing job work to 12% so as to solve the problems being faced by the member dyeing units of Common Effluent Treatment Plants (CETPs) at Tirupur.</p> <p>Since the GST rate for textiles CETP is not revised to 5%, revision of GST rate to 12% for dyeing job work will give relief to the member dyeing units of textile CETPs. This will avoid accumulation of GST in their GST account and also erosion of working capital.</p>	Status quo may be maintained. As the issue is pending with GoM.
38.	Reduce the rate of GST on machine job work from 12% to 5%.	The job workers belong to MSME sector. Reduction of rate will benefit them a lot.	<p>The request to reduce GST rate on all job work services from 18% to 5% was examined by Fitment Committee and GST Council in September, 2019. It was observed that job workers in the engineering and automobile sector have substantial ITC. The inputs and input services used by them attract GST @ 18%. Reducing the rate on job work services in this sector from 18% to 5% will result in inversion at the level of Job worker.</p> <p>Therefore, it was decided that the rate of GST on all job work services (except bus body building), which are not</p>

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			currently eligible for the 5% rate may be reduced to 12%.
39.	To exempt chilling and packing of milk in pouches	<p>Sr. 24 of Notification no. 11/2017-CT(R) dated 28.06.2017 provides for exemption from GST to support services provided for agricultural produce. The agriculture produce is defined as any produce out of cultivation, rearing of all life forms of animals as is usually done by the cultivator or producer.</p> <p>Presently 5% GST is applicable on the packing of pouch milk by third party plants or through contractors in own plants by dairy cooperatives. Milk is exempted from GST</p> <p>No milk producer at village level is equipped to perform chilling, storage, packing to sell the product in the market. Under, AMUL pattern, the milk producer is the owner at every level i.e village, district and state levels. Thus, practically all activities are carried out by milk producers only through cooperatives. This is not considered as activity carried out by the milk producers. The present exemption under GST is practically not feasible.</p> <p>Further, in case of fruits and vegetables, the entire exercise of pre-conditioning, pre-cooling, ripening, waxing, retail packing etc are exempted vide entry 57 of Notification 12/2017-CT(R) dated 28.06.2017 while these activities are performed by job workers</p>	<p>1. This request was made by Gujarat Co-operative Milk Marketing Federation Ltd (GCMMF) earlier also vide letter dated 01.08.2018. The request was examined and it was conveyed to GCMMF vide letter dated 09.08.2018 that <i>Chilled and packed milk for retail sale is not covered by the definition of 'agricultural produce' as the process of chilling and retail packing of milk are usually not done by a cultivator or a producer. The processes of chilling and packing are also not processes carried out at an agricultural farm. Thus, chilling and packing of milk is not exempt from GST and the said activity of chilling and packaging of milk provided by way of job work, attracts levy of GST @ 5%. It was also conveyed that as informed by AMUL, job workers make substantial investment in plant and machinery for chilling and packing of milk. Exempting chilling and packing of milk would block input credit of job workers and increase their costs.</i></p> <p>2. However, GCMMF challenged the said communication in the High Court of Gujarat.</p> <p>3. Gujarat High Court quashed the said letter vide judgement dated 13.12.2019 in 8320 of 2019 (M/s. Gujarat Co-operative Milk Marketing Federation Ltd and Ors.) on the ground that chilling of milk does not alter its essential characteristics and it still remains raw milk. Therefore, storage, chilling and packing of milk is exempt from GST.</p> <p>4. The exemption from GST has been provided to packing of agricultural</p>

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			<p>produce. Agricultural produce has been defined in the relevant notification as produce of cultivation of plants or rearing of animals on which either no processing has been done or such processing has been done which is mostly done by a cultivator or producer. The process of chilling or packing of milk is not carried out by the producer of milk.</p> <p>5. SLP has been filed against the Gujarat High Court order.</p> <p>6. Since the matter is sub-judice and an exemption would block ITC of job workers and increase their costs, the request of Gujarat Co-operative Milk Marketing Federation Ltd may not be accepted.</p> <p>7. The request for exemption from GST on packing of processed milk into packets by job worker was also examined by GST Council in its 22nd meeting held on 06.10.2017. The council did not accede to the same and recommended that Job work services in relation to food and food products falling under Chapters 1 to 22 of the HS Code would attract GST rate of 5%.</p> <p>No change recommended.</p>
40.	<p>The following processes should be exempted from the levy of GST:</p> <ul style="list-style-type: none"> • Cutting, Salting, Brining, syruping of fruits and vegetables. • Drying and grinding of fruits and vegetables 	<p>Most of the units undertaking such operations belong to MSME, SHG etc. They have to bear the load of GST and spend their valuable time to fulfil documentary compliance for GST.</p>	<p>GST on job work related to food and food products already attracts lower rate of 5%. [Sr No. 26 (i) (f) of Notification No. 11/2017-Central Tax (Rate).</p> <p>Further, small suppliers are covered by threshold exemption provided for registration and composition scheme has also been provided for ease of compliance.</p> <p>Request may not be accepted</p>

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	• Pulping or pureeing of fruits and vegetables		
41.	To exempt GST on Salt handling charges (Loading-unloading and clearing-forwarding)	<p>Salt as a commodity as well as its transportation is exempted from GST as it is an essential commodity.</p> <p>GST on salt handling services such as loading-unloading and clearing-forwarding services, increases the cost of transportation especially when done by railways or vessels</p> <p>Salt manufactures and traders do not get ITC of the GST paid by them.</p>	<p>This is a new exemption request. No rationale for exemption. Exemptions block ITC chain and distort tax structure.</p> <p>Request may not be accepted</p>
42.	Reduce GST on stevedoring service for import of Coal from 18% to 5%.	<p>GST on sale of coal is 5% while the input services like stevedoring, sampling etc. used in the business are at 18%. Since the refund of ITC accumulated on account of input services is not eligible, it leads to huge accumulation of utilized ITC.</p>	<p>Commodity based rate on input services may not be feasible nor it is desirable. Further, reducing GST on stevedoring might lead to inversion on the end of the supplier of stevedoring service.</p> <p>As such recipient could avail ITC. Hence no change recommended.</p>
43.	<p>To clarify that loading and unloading, storage and warehousing of containers with agricultural produce at the port terminals is exempt from GST.</p> <p>Alternatively, allow credit of GST charged by the ports on such services in respect of agricultural produce despite there being an exemption on services of logistics service provider.</p>	<p>The entry at Sr. No. 54, of Notification No. 12/2017 – Central Tax (Rate), dated 28 June 2017 grants exemption services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of:</p> <p><i>“...(e) loading, unloading, packing, storage or warehousing of agricultural produce; ...”</i></p> <p>The services of terminal handling and storage facility by Ports clearly involve activities of loading and unloading, storage, warehousing etc., and hence when rendered for agricultural produce are exempt.</p>	<p>Handling of such goods, loading, unloading etc, at a port is not covered by the exemption.</p> <p>Request is for deepening of exemption. This may not be agreed to.</p>

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44.	Services provided by units operating within the Free Trade & Warehousing Zone (FTWZ) to foreign entities availing services of Indian FTWZ may be exempted.	<p>While FTWZ is deemed to be a foreign territory and is also considered to be a tax-free enclave, however, GST is being levied on services provided to foreign entities (who do not have any presence in India) availing services of Indian FTWZ.</p> <p>This is mainly because of the GST provision with respect to "Place of Service".</p> <p>The following may be mentioned with respect to the above:</p> <ul style="list-style-type: none"> • In case of services rendered by any IT SEZ to foreign entities within a SEZ located in India, GST is zero rated/exempted. • FTWZ Units provide various services to foreign entities like storage for their goods; value added services, transportation, etc. within its SEZ area in India. • These foreign entities have no physical presence within FTWZ or in India, except for their goods lying within the FTWZ area. <p>However, presently these foreign entities are required to pay GST @18%. GST paid by such foreign entity is cost to them as they cannot take input credit on the GST paid. Also, there is no mechanism for refund of GST charges on such services thereby discouraging foreign entities to avail services of Indian FTWZ's.</p>	<p>Exempting the services provided by units in FTWZ provided to foreign entities, where place of supply of service is in India, say, storage, warehousing, cargo handling etc, it would create distortion in tax structure since this would lead to a situation where the same service provided by units located outside FTWZ to foreign entities will be taxable and those provided by unit located in FTWZ would be not taxable. The unit located outside the FTWZ is at a disadvantage.</p> <p>Further, the same service was taxable under service tax.</p> <p>As such the foreign entity has option to register which would facilitate them. Even today, if the foreign entity is operating in FTWZ, they would have their authorised representative considering that they are involved in import, export (in and out of India) and DTA clearances etc (which entail GST and customs duty liability.</p> <p>No change recommended.</p>
45.	To exempt GST on participation at trade fairs	Exporters of garments from MSME cannot survive in the sophisticated markets unless they regularly participate in Trade Fairs and Exhibitions of global benchmarks. It would be helpful if GST is exempted on participation at these events.	<p>This is a new exemption request. GST rate will lead to cascading of input taxes and result in distortion of tax structure. Further, providing exemption or special rates for a particular user group goes against the basic principles of GST.</p> <p>Request may not be accepted.</p>

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46.	To extend exemptions to non-governmental entities and their sub-contractors providing such services as are applicable to Governmental authority by way of any activity in relation to any function entrusted to a Panchayat/ Municipality under article 243G/243W of the Constitution are also exempt vide entry 3 & 3A of Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017.	<p>In certain townships maintained by industries, civic amenities like sanitation, solid waste management, supply of water etc are provided by the industries operating in such region instead of the local bodies like Panchayat or Municipality. These services are provided by the industries either by themselves or using the service of the sub-contractor.</p> <p>These activities are mostly covered under function entrusted to a Municipality /Panchayat under article 243W/243G of the Constitution. Accordingly, when these activities are undertaken by governmental authority it is exempted vide entry no. 4 & 5 of Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017.</p> <p>Further, supplies of sub-contractors in nature of pure service and composite supply provided to Governmental authority by way of any activity in relation to any function entrusted to a Panchayat/ Municipality under article 243G/243W of the Constitution are also exempt vide entry 3 & 3A of Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017.</p> <p>The above exemptions are not available in the cases where such services are provided by the industrial undertaking as they do not qualify as Governmental authority and further their sub-contractors are also not eligible for. The applicable GST on such service are ultimately adds up to the cost of civic amenities, and thereby discourages proper civic amenities in industrial areas.</p>	The said exemption has already been pruned w.e.f. 1.1.2022 and Governmental Authority /Government entity have been excluded from the ambit of said exemption.
47.	Request for Applicability of CGST notification No. 15/2021 & 16/2021 both dated 18.11.2021 w.r.t	The contracts awarded by the Governmental Authority or by Government Entity considering the concessional GST rate @ 12% and allocated the fund, accordingly the contract conditions were	On the recommendations of the Council, benefit of concessional rate of duty on work contract supplied to Governmental Authority and governmental entity was withdrawn vide CGST notifications dated

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	removal of concessional rate of duty available for projects meant for Governmental Authority and governmental entity, on contract entered only after 01.01.2022	<p>made and accepted by the contractor.</p> <p>Amendment by omitting the “Governmental authority” & “Government Entity” from the concessional GST rate will increase the cost of the project without any budget allocation, which may lead to non-payment or delayed payment by the awarder of the contractor. Consequently, it will jeopardize various on-going projects which are under execution.</p> <p>It is represented that government should not change the existing rate of tax for the ongoing contracts, which may offend by the principle of promissory estoppels.</p>	<p>18.11.2021.</p> <p>GST law clearly provides for the manner in which continuous supply are subject to GST in case of rate change.</p> <p>Any request, if agreed for one sector, would invite similar request from other sectors. There are similar requests for grandfathering in solar, renewable energy and other sectors. Further, in goods also in case of any rate increase, the company seek continuation of lower rate of all goods in the pipe lines, i.e. cleared from factory but pending in supply chain. Their request has not been accepted.</p> <p>If 12% rate is continued for old contracts, multiple rates of 12% and 18% would be there for many years in future leading to complex rate structure.</p> <p>Concessional rate has been withdrawn only for Government entities and Government Authorities. As such, Government and local authorities are not affected.</p> <p>No change recommended.</p>
48.	<p>i. Request to provide facility for payment of GST on receipt basis in respect of rentals as a specific case.</p> <p>ii. To grant exemption to</p>	<p>The Mumbai Port Trust (MbPT) is facing severe challenges in clearing tax liabilities. The Port is paying tax on rental income received from its tenants on accrual basis instead of receipt basis.</p> <p>However, only 40% of billed amount is recovered by the Port from the tenants owing to disputes in various forums.</p>	<p>GST law has been consciously framed to collect GST on accrual basis. Service tax was also collected on accrual basis (except small taxpayers).</p> <p>No change recommended.</p>

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	<p>Mumbai Port trust on penalty/ interest for outstanding GST amount.</p> <p>iii. Grant necessary relief/ concession to Mumbai Port Trust till recovery of final dues and arrears.</p>	<p>Presently, MbPT has paying its tax liability from its own fund. This is severely affecting the cash flow of the port. Therefore, it has been requested to grant specific relief to MbPT.</p>	
49.	<p>GST payable on the royalty paid to the Government for obtaining licence to extract and sale of rough boulder stone from earth may be exempted for initial two years of GST regime.</p>	<p>Mine owners are entities who are engaged in extraction of rough boulder stone from earth. Boulders are crushed into small stones, known as Gitti. These entities are required to pay GST on royalty paid to the State Government under reverse charge mechanism.</p> <p>However, in the initial years of GST implementation, they were not aware of the said provisions and due to lack of knowledge, did not pay GST on the royalty payments made to the State Government. They have also stated that had the mine owners paid taxes, the same would have been available to them as ITC and thus, the whole exercise would be revenue neutral. It has also been contended by the association that royalty is a tax and levying tax again on royalty will lead to double taxation.</p>	<p>1. Any activity undertaken by Government or local authority against a consideration constitutes a service and the amount charged for performing such activity is liable to GST. Services provided by the Government or a local authority to business entities were made liable to Service Tax w.e.f. 01.04.2016. The same has continued in the GST regime. Thus, it is not a new levy introduced only in the GST regime.</p> <p>2. Granting exemption on such services would not be revenue neutral.</p> <p>3. The contention that royalty is a tax and GST on the same amounts to tax on tax, lacks substance.</p> <p>Request may not be accepted</p>
50.	<p>To clarify that National Permit fee is not a consideration for any service therefore not liable to Service Tax/GST for period 30.06.2017 to 01.07.2017.</p>	<p>Exemption for service by way of grant of national permit to a goods carriage on payment of fee exempted from GST w.e.f 1.10.2021.</p> <p>Liability to pay Service Tax for the period from April, 2016 to June 2017 and thereafter GST for period 1.07.2017 to 30.09.2021 remains</p>	<p>1. 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.</p> <p>2. The Fitment Committee, however, felt that National permit fee may be specifically exempted from GST prospectively. This was approved by the</p>

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			<p>GST Council.</p> <p>3. The exemption on National Permit Fee is applicable prospective w.e.f 1.10.2021. National Permit Fee was taxable during the period 1.07.2017 to 30.09.2021.</p> <p>No change recommended.</p>
51.	Exempt GST on MSME- Cluster Development Approach scheme for Malegaon, Nashik.	It is a textile hub and GST component in the project is creating a bottleneck.	<p>Request for new exemption. Area-based exemptions are not in consonance with the principles of GST. Support to industry cluster, if any, should be considered where considered necessary by the respective government.</p> <p>Request may not be accepted</p>
52.	GST exemption for works under MPLAD funds or refund the GST paid on works back to the MPLADS funds of the MP.	At present, all development works undertaken under MPLADS come under purview of GST. Most works and materials used in such works are charged @ 18% of GST, leading to strain on the works done as the amount of funds demarcated for such work under MPLADS proportionally reduces due to levy of GST. It also leads to decrease in the quantity of the work done and is not in the interests of the people.	<p>End use-based exemptions are not advisable. They are difficult to monitor and prone to misuse.</p> <p>Exemption will block ITC of suppliers and increase cost.</p> <p>No change recommended.</p>
53.	GST on licence fee paid to railways by small licence holders, vendors, retailers etc. may be exempted from GST. These licencees should be treated as retailers rather than service providers.	<p>GST on licence fee paid to railways is a new tax and is a burden on small vendors.</p> <p>Further, their activities are similar to retailers as most of their sales are of tax paid bought items like biscuits, cold drinks, wafers etc.</p>	<p>The request of Railway licencees for exemption of GST on the license fees of the catering licences at the railway stations was examined by the GST Council in 28th meeting held on 21.07.2018. The GST Council did not recommend any change in GST rate.</p> <p>Request may not be accepted.</p>
54.	Exempt GST on the fee paid by co-	Co-operative spinning mills have been struggling to survive and a lot of working	Request for new exemption. GST paid on such membership fee is available as

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	operative spinning mills to Maharashtra State textile Co-operative Federation Ltd.	capital is blocked in paying GST on the membership fee	ITC to the spinning mills. Request may not be accepted
55.	Exempt services supplied by the Food Safety and Standards Authority of India (FSSAI) from Service Tax/ GST prior to 27.07.2018.	Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators have been exempted from GST w.e.f. 27.07.2018.	It was decided in 32 nd GST Council meeting that as a matter of principle, retrospective exemptions would be avoided. Council had taken a conscious decision for a prospective exemption in this case. Request may not be accepted.
56.	(a) Exempt Delhi Electricity regulatory Commission (DERC) from GST (b) Request to exempt regulatory functions of Central Electricity Regulatory Commission (CERC) (and also SERCs and JERCs) from GST (c) Request to issue a clarification that the GST on the services provided by Real estate regulatory Authority (RERA) by way of registration of Real Estate projects and real estate agents is covered under	<u>DERC:</u> DERC is a statutory body regulating the licensing companies engaged in generation, transmission and distribution of electricity. DERC was exempt in service tax regime Electricity transmission Service (by an electricity transmission distribution utility) is also exempt from GST Further, services provided by regulators such as SEBI, RBI, IRDA are exempt from GST <u>CERC:</u> As per various provisions of Electricity Act 2003, the CERC functions as a quasi-judicial body. Moreover, SC in Civil Appeal No. 14697 of 2015 between state of Gujarat and others vs Utility Users' Welfare Association and other declared that "...this thus leaves no manner of doubt that the State commission, though defined as 'commission' has all the trappings of the court". As per clause 2 of schedule III of CGST	<u>CERC/DERC</u> 1. CERC/DERC, besides having quasi-judicial functions which are a no-supply under Schedule III, also has functions which are in the nature of regulatory functions for which fee are levied. CERC has requested for exempting the fee levied for regulatory functions also. 2. 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) pay GST. 3. In the 45 th GST Council meeting, request of International Financial Services Centres Authority which is a regulatory body for International Financial Services Centers to exempt the fee charged by them from GST was not accepted. <u>RERA:</u>

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	Heading 9983 or 9991 of Notification No. 12/2017 — Central Tax (Rate) 28 th June, 2017 and hence exempt as per S.N. 47 of the notification.	<p>Act 2017, services by any court or tribunal established under any law for the time being in force shall neither be treated as supply of goods nor a supply of services</p> <p><u>RERA:</u></p> <p>Registration of Real Estate projects and agents is a <u>statutory function</u> of Real Estate Regulatory Authority as per RERA and not a official se transaction.</p> <p>In this regard, it has been pointed out by Punjab RERA and All India Forum of Real Estate Regulatory Authority (AIFORERA) that GST Authorities feel that the ‘service’ of registration of real estate projects and real estate agents is subject to the levy of GST.</p> <p>Regulatory bodies such as Insurance Regulatory and Development Authority of India (IRDAI), Securities and Exchange Board of India (SEBI) and Employees’ Provident Fund Organisation (EPFO) are also exempt from the purview the GST Act. Further, Central Board of Direct Taxes (CBDT) has notified that the Real Estate Regulatory Authorities are eligible for exemption under Section 10(46) of the Income Tax Act, 1961.</p> <p>In view of the above, it is requested to either exempt the GST on the service of registration of real estate projects and real estate agents or issue a clarification that the same is covered under Heading 9983 or 9991 (SN 47) of Notification No. 12/2017 —Central Tax (Rate) 28th June, 2017, issued by Department of Revenue, Ministry of Finance.</p>	<p>4. S.N. 47 of 12/2017 provides that services (Heading 9983 and 9991) provided by the Central Government, State Government, Union territory or local authority by way registration required under any law for the time being in force, is exempt from GST.</p> <p>5. However, RERA is not covered under central or state government. Therefore, it does not come under the ambit of entry 47 of the notification no. 12/2017-CTR dated 28.07.2017.</p> <p>6. Many of the govt agencies/authorities even if they are doing statutory function are not exempt from GST viz - Competition Commission of India, Inland Water Supply Authority of India.</p> <p>7. Further, GST exemption results in inversion of tax rates and distortion of tax structure. Therefore, the request should not be acceded to.</p>
57.	Exempt GST on services provided by Forum of	FOR is a statutory body to provide a common platform to the electricity regulators to share their experiences and	Request for new exemption. Further, the GST paid on such membership fee is available as ITC to the members.

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
	Regulators (FOR)	best practices. Forum's main source of income is from the membership fees it receives.	Request may not be accepted.
58.	Stressed Asset Stabilisation Fund (SASF) be granted exemption from GST.	<p>SASF is an SPV constituted in the form of <u>Trust</u> vide Trust Deed dated 24.09.2004 with the object of acquiring Stressed Assets.</p> <p>It has been notified as a <u>financial institution</u> under section 2(h)(ii) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.</p> <p>It has been authorised to realise Stressed Assets by restructuring, arriving at compromise settlements with borrowers, taking legal measures or adopting such measures as they may deem fit.</p> <p>The entire amount realised from the stressed assets is directly remitted to GOI as revenue to be utilised to redeem the zero-interest bearing Special Securities issued by the GOI and transferred to IDBI Ltd.</p>	<p>This is a new exemption request. Exemption/lowering GST rate will lead to cascading of input taxes and result in distortion of tax structure.</p> <p>Request may not be accepted.</p>
59.	Request to exempt the activities undertaken by the Bharat Sevak Samaj from ST/GST	<p>The Bharat Sevak Samaj (BSS) is the National Development Agency established by erstwhile Planning Commission on the recommendation of the Indian Parliament in the year 1952 to undertake the extension activities of the Development programs initiated by the Govt. BSS extends and implements various developmental initiatives with the participation of its dedicated workers.</p> <p>It also develops the man power through vocational/ skill training programs and capacity building programs through its member institutions. The main focus of BSS is to develop the manpower through training programmes and to utilize the manpower to cater to National development. These training programs</p>	<p>The proposal to exempt BSS was discussed by the GST Council in the 28th Meeting held on 21 July 2018. The request of BSS was not acceded to.</p> <p>Following exemptions are already available for skill development/ vocational training programs.</p> <p><u>Sl. No 69 of the notification No. 12/2017- Central Tax (Rate)</u> Services provided by a training partner approved by the National Skill Development Corporation or the Sector Skill Council.</p> <p><u>Sl. No 71 of the above notification</u> Services provided by training providers (Project implementation agencies)</p>

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		mainly cater to the marginalized sections, socially and economically backward groups and educational drop outs with the aim to bring them into the main stream of the society and to make them capable enough to support the national development process.	<p>under Deen Dayal Upadhyaya Grameen Kaushalya Yojana by way of offering skill or vocational training courses certified by the National Council for Vocational Training.</p> <p><u>Sl. No 72 of the above notification</u> Training programmes funded (75% or more of the expenditure) by Central or State Government.</p> <p>No change recommended.</p>
60.	Reduce GST on commission earned on e-service charges collected on services provided by Common Service Centres (CSC) from 18% to 5%.	<p>CSC e-Governance Services India Ltd. is a SPV under Companies Act, 1956 for monitoring and implementing the Common Services Centres Scheme. CSC network comprises of rural and urban IT enabled delivery outlets established across the country providing various e-services to residents.</p> <p>Out of approximately 3,65,000 centres, around 70% are in far flung rural areas or in small towns delivering various G2C services and government privileged services such as Pradhan Mantri Fasal Bima Yojna, Pension schemes, digital literacy, legal literacy schemes, PAN card services, income tax filing and GST return filing etc.</p> <p>These CSCs are owned by independent entrepreneurs; i.e., Village Level Entrepreneurs (VLEs). This project promotes rural entrepreneurship and would create rural employment opportunities.</p> <p>The service charges are fixed on every G2C and B2C services, which includes taxes (GST @ 18%). These VLEs are last mile service providers, who are getting a substantially reduced rate of revenue sharing due to severe tax compliances at the rate of 18%.</p>	<p>This request is for a new exemption.</p> <p>Most of the inputs, input services used in CSCs like hiring of premises, manpower supply, computers, etc. are taxed at 18%. Reducing the rate of GST on output services from 18% to 5% may lead to accumulation of ITC.</p> <p>Request may not be accepted.</p>

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		Reduction of GST rate to 5% will contribute to net worth of service charges, which is a major component for running their livelihood.	
61.	Request for tax exemption on all the expenses made by an organization on sanitation and hygiene as per guidelines of Government and to treat such expense as CSR expenses	No justification provided.	<p>Such blanket exemption on supplies of sanitation and hygiene material and services to organizations would be prone to misuse.</p> <p>ITC of GST paid on such input supplies is available.</p> <p>Exemption shall lead to blockage of ITC of the suppliers of sanitation & hygiene goods and services.</p> <p>No change recommended.</p>
62.	Exempt GST on CSOs (Civil Society Organizations)	CSOs work on no profit basis.	<p>Specified activities performed by entities registered under section 12AA of the IT Act are exempt from GST vide serial No. 1 of notification No. 12/2017-CT(R).</p> <p>CSOs registered under section 12AA of the IT Act are eligible for the said exemption in respect of the activities specified in the said notification.</p> <p>Providing a blanket exemption to activities performed by CSOs may not be considered.</p>
63.	Request to remove exemption limits of renting of premises as provided at Sl. no. 13 for entities registered under 12(AA) of the Income-tax Act, 1961, or a trust or an institution registered under sub-clause (v) of clause (23C) of	<p>BAPS, a charitable trust provide following services:</p> <p><u>Renting of Immoveable Properties by individual trusts</u>, whose focus is on social service, like education, health care, and publications related to religion and spirituality and herbal medicines etc. Certain other independent trusts carry out various social welfare activities from the premises leased / rented out by main trust; the BAPS charges rent from the service</p>	<p>i. There is no merit to reduce the existing limit of exemption towards renting of precincts of a religious place or completely exempt the renting activity.</p> <p>ii. Internal transaction between individual 12AA entities are taxable if such transaction value exceeds the exemption limit provided under Sl. No. 13 of the notification No. 12/2017- Central Tax (Rate). Exemption to such internal transactions may not be granted</p>

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	<p>section 10 of the Income-tax Act.</p> <p>OR</p> <p>Request to exempt renting by one 12(AA) entity to another 12(AA) entity registered under the Income Tax Act, 1961, who are engaged in activities of relief to poor, education, healthcare, environment protection, spread of religion, spirituality, yoga-related activities etc.</p>	<p>specific trust for the usage of property at reasonable rates.</p> <p>Till introduction of GST, renting of premises by a religious trust was exempt from Service Tax. But in GST, this exemption has been curtailed by prescribing limits on amount charged for these services.</p>	<p>Similar reference from Auroville Foundation has not been accepted by GST Council in its 28th Meeting held on 21st July, 2018.</p> <p>No change recommended.</p>
64.	Request to provide GST exemption on works contract service on buildings owned by an entity registered under section 12AA of IT Act and where such buildings are meant predominantly for religious use by general public.	<p>In Service Tax, an exemption was available on WCS related to buildings owned by religious and charitable trusts registered under section 12AA of Income Tax Act.</p> <p>In GST regime, erstwhile ST exemption has been discontinued.</p>	<p>In Service Tax, only the service tax component of WC was exempted. There was no exemption from VAT. Moreover, there were embedded taxes on inputs, input services and capital goods (such as service tax, excise duty and VAT). Further, most of the states levied VAT under composition scheme ranging from 1 to 5%.</p> <p>Keeping the overall pre-GST tax incidence in mind, composite supply of works contract service, supplied by way of construction, erection, commissioning, or installation of original works pertaining to a building owned by an entity registered under section 12AA, is presently taxed at 18% with ITC.</p>

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
			No change recommended.
65.	Request for GST exemption on the user fee paid by researchers to custodian institutions for use of R&D equipment and facilities.	<p>The I-STEM Web Portal is a platform that links researchers and R&D institutions having R&D equipment and facilities. Using the gateway facility available on I-STEM, users locate specific facility (equipment) they need for their R&D work and identify the one that is either located closest to them or available the soonest.</p> <p>By paying certain amount of user fees through the portal or the web site of the organization, where the desired facility is located, one can make a reservation for using such facility. The user fee varies depending on whether the user is an academia, a public institution, or an industry.</p> <p>I-STEM facility optimizes the use of R&D facilities which are often underutilized.</p>	<p>Request is for a new exemption.</p> <p>Exemption will block ITC of R&D institutions. Services provided by Government R&D institutions (CSIR, BARC, DRDO, Atomic Mineral Division labs etc.) to individual researchers are already exempt.</p>
66.	<p>(i) To exempt GST on the services provided by Technology Innovation Hubs (TIHs)</p> <p>(ii) Expand the scope of exemption to include such incubators which are recognized under any Centre/State government schemes, funded partially or fully by Government</p>	<p>(i) Department of Science and Technology (DST) is implementing the National Mission on Inter disciplinary Cyber-Physical Systems (NM-ICPS), which is aimed at developing advanced technologies and applications as per the requirements of the Central Ministries, Departments, State governments, PSU, Industries etc.</p> <p>Accordingly, DST has established 25 Technology Innovation Hubs (TIHs) as Section 8 Companies (not for profit) under the Companies Act, 2013, across the country in reputed academic institutes such as IITs. Complete seed grant has been provided by DST and TIHs are open to raise funds from the industry and other institutions.</p> <p>These TIHs are focused on technology & product development, human resource development, development of technology business incubators/ Start-ups and</p>	<p>To promote the Science and Technology ecosystem, following exemptions are already available:</p> <ul style="list-style-type: none"> • GST is exempt on services provided by an incubatee (an entrepreneur located within the premises of and having an agreement with a recognised Technology Business Incubator or Science and Technology Entrepreneurship Park, to develop and produce hi-tech and innovative products) up to a total turnover of fifty lakh rupees in a financial year subject to some conditions [Sl. No. 44 of notification no. 12/2017- CTR]. • GST is exempt on taxable services, provided or to be provided, by a recognised Technology Business

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
		<p>international collaborative research.</p> <p>TIHs have been recognised as Scientific and Industrial Research Organisations by the Department of Scientific and Industrial Research, GOI and are thereby, eligible to get Income Tax Exemption. Further, all host institutes are exempt from GST also. However, same exemption is not applicable to TIHs as they are independent entities created under Company Laws.</p> <p>(ii) Incubators established as section 8 Companies (not for profit) under the Companies Act, 2013 are important for the development of Start Ups and thereby promote innovation and entrepreneurship.</p>	<p>Incubator or by a recognised Science and Technology Entrepreneurship Park or by recognized bio-incubators [Sl. No. 48 of notification no. 12/2017- CTR].</p> <p>To avail the benefit of above exemptions, incubators or Sci Tech parks are required to be recognised by Dept. of Science and Technology, GoI.</p> <p>Requests of exemption for specific companies may result in distortion of tax structure and break the seamless flow of credit, hence further expansion of exemptions is not desirable. Therefore, no change recommended.</p>
67.	Reduce GST on telecom services from 18% to 12%	<p>Telecom is a capital intensive and technology driven sector requiring considerable capital investment.</p> <p>Reduction in GST will make telecom services more affordable and will have multiplier effect on different sectors as well.</p>	<p>Exemption/lowering GST rate may lead to cascading of input taxes distortion of tax structure and shall also have revenue implication. Already telecom company's have been complaining on account of accumulated ITC at their end.</p> <p>Request may not be accepted.</p>
68.	Request to reduce GST on software products to 12% from current 18%	<p>IT companies are badly impacted due to COVID 19.</p>	<p>The Covid -19 pandemic has affected all sectors. Exemption/lowering GST rate will lead to cascading of input taxes and result in distortion of tax structure. It will also impact revenue collection.</p> <p>Request may not be accepted</p>
69.	Suspension of GST under RCM on import of services for mainly export oriented companies in software sector	<p>Software firms import technical services used for export of their services, for which they pay GST @18% under RCM.</p> <p>They are unable to set off ITC accumulated through this payment since they are into exports which is zero rated under GST and have no other output tax liability. While refund can be claimed of this accumulated ITC, it requires them to have a lot of documentation, collect FIRC's and face</p>	<p>(i) The basic principle of GST is to tax supply of goods and services at each stage of value addition and to allow ITC of tax paid at the preceding stage for discharge of tax at the succeeding stage.</p> <p>(ii) Since exports are zero rated, refund of the GST under RCM on import of services (or for that matter, goods) for export-oriented units is available to the importer. Refunds are envisaged to be expedited in</p>

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		technical IT constraints as well. Therefore, they have requested that this GST under RCM be suspended to improve their cash flows.	GST regime. No change recommended.
70.	Increase GST on OIDAR Services from 18 to 28%	Switching companies and industries over to OIDAR services in lockdown period and huge GST revenue loss due to closure of theatres and multiplexes which contributes considerable in the GST.	OIDAR services are not just restricted to online entertainment and gaming but also include advertising services, cloud services, provisioning of e-books, software digital data storage etc. The highest GST rate of 28% on such services may not be reasonable. No change recommended.
71.	Zero-rating the healthcare services	Input supplies forms a large chunk of expenditure which the patients have to incur for availing healthcare services. Zero-rating will not only ensure that the credit chain in intact but also that the input taxes are not loaded into the cost of healthcare services. Many countries like Canada, Ecuador, Saudi Arabia and UEA have adopted to provide 'zero rating' benefit to healthcare sector.	In 37 th GST council meeting, Council did not agree to the proposal of zero rating of healthcare services. The health care services are already exempt from GST. There is a wide variety of input goods and input services consumed by healthcare industry, many of which are common across other businesses. No change recommended.
72.	Request to exempt GST on rent paid by hospitals.	To reduce high capital costs, buildings are taken on rent for setting up healthcare facilities. Hospitals are not entitled to avail the ITC of GST paid on rent. Tax burden is shifted to the patients.	Services by way of health care services by a clinical establishment, an authorized medical practitioner or paramedics are exempt from GST. The request is for zero rating/deepening of exemption. Such zero rating has wider implications. No change recommended.
73.	Request to exempt driver training and refresher training	There are 1.49 lacs of fatal accidents in India and Western India Automobile Association are trying its bit to reduce such	Following exemptions are already available for skill development/vocational training programs.

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	imparted by training schools to fresh drivers.	accidents by imparting driver training and refresher training for fresh drivers for last 70 years. 18% GST is very high.	<p><u>Sl. No 69 of the notification No. 12/2017- Central Tax (Rate)</u> Services provided by a training partner approved by the National Skill Development Corporation or the Sector Skill Council.</p> <p><u>Sl. No 71 of the above notification</u> Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana by way of offering skill or vocational training courses certified by the National Council for Vocational Training.</p> <p><u>Sl. No 72 of the above notification</u> Training programmes funded (75% or more of the expenditure) by Central or State Government</p> <p>Request is for a new exemption. May not be accepted.</p>
74.	<p>(i) To exempt the sports training or coaching services availed by an educational institution.</p> <p>(ii) Exempt GST on sports activities.</p>	<p>(i) These are core services availed by educational institutions for the benefit of its students.</p> <p>The services are exempt only if the entity providing the sports training services are registered under section 12AA of the IT Act, 1961.</p> <p>Sports is a core element of education system and in line with 'Khelo India – National Programme for Development of Sports' initiative of Ministry of Youth Affairs and Sports, GoI for promoting sports at school level, the school outsource such services to specialized service providers in providing world class coaches and training/coaching to students.</p> <p>These services were exempt in Service tax regime as entry in notification No.</p>	<p>In 14th GST Council meeting held on 18-19th May 2017, certain existing exemptions under then service tax was reviewed (Annexure VI, List B). One of the services under review was the instant sports training and coaching services. So, a conscious decision by the Council to prune the exemption.</p> <p>Further, in the 15th GST Council meeting held on 3rd June, 2017, the entry as existing under service tax was modified to limit its scope by inserting rider that the entity should be registered under section 12AA of the IT Act.</p> <p>Many of the sports institutions are for profit entities and charge considerable amount for their training/coaching services, therefore, there does not appear need to broaden the scope of the</p>

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		<p>25/2012-ST read “8. <i>Services by way of training or coaching in recreational activities relating to arts, culture or sports;</i>” while the same has been restricted in GST “<i>Services by way of training or coaching in recreational activities relating to sports by charitable entities registered under section 12AA of the Income-tax Act</i>”</p> <p>(ii) Rate of 18% on sports events or booking sports facilities increase the price of availing such facility.</p>	<p>exemption.</p> <p>As regards, exempting GST on sports activities, it is a request for new exemption. If exempted, the GST paid on inputs/input services would stick as cost, which might not allow any reduction in price of such facilities.</p> <p>No change recommended.</p>
75.	Request for Exemption from levy of GST on the NSQF aligned courses offered by National Institute of Electronics & Information Technology. (NIELIT)	<p>1. Exemption from levy of GST on the courses offered by NIELIT since courses are aligned with NSQF, and it will provide education to the poor and deprived students at lower fees and ultimately help in the upliftment of the youth of the country by making them skilled and employable.</p> <p>2. Courses are available for youth and public at large.</p>	<p>1. NIELIT is an autonomous society under the administrative control of Ministry of Electronics & Information Technology Government of India imparting training and skill to youth and public.</p> <p>2. S. No. 69 and 71 of Notification No. 12/2017 dated 28.06.2017 already provide exemption to a number of skill development activities. Any service provider satisfying the criterion laid therein could claim GST exemption.</p> <p>3. As far as, NSQF is concerned, it is deemed to be a universal quality standard framework for training as well as education imparted throughout India. It has no implication to taxability or otherwise in GST.</p> <p>No change recommended.</p>
76.	Allow body corporates to pay GST on forward charge basis in case of receipt of sponsorship service.	The body corporate providers are not able to claim input tax credit on the sponsorship services.	The request was taken to 28 th GST Council meeting held on 21.07.2018 [Agenda item 7, para 5, Annexure VI]. The Council did not agree to the same. Sponsorship service is provided even by many non-commercial establishment, institution etc. A separate dispensation merely for body corporate is not desirable.

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			No change recommended.
77.	Reduce GST from 28% to 12% on services by way of admission to events whose tickets are sold through a digital platform.	<p>GST Council has been removing items from the 28% bracket excluding sin and luxury items.</p> <p>High GST of 28% meant for sin or luxury items is affecting the growth of the live entertainment sector. Apart from live entertainment events, only services provided by race clubs and gambling are taxed at 28%.</p> <p>Some of the live events like Indian classical dance, folk dance, theatrical performance, drama is taxed at 18%. Other live entertainment events like theme parks, water park, joyrides, sporting events like IPL, horse racing are taxed at for way of admission 28%.</p>	<p>28% is levied only on certain activities like horse racing, IPL, facilities having casino etc.</p> <p>Entry to other entertainment activities attract GST at the standard rate of 18%.</p> <p>Hence no change recommended.</p>
78.	To waive GST for 1 year from date of resumption of regular cinema operations.	<p>Multiplexes and cinema halls have been closed since Mar, 2020 in the wake of COVID 19 pandemic, this has resulted in nil revenues and zero cash flow for the industry.</p> <p>However, operating expensed like staff salaries, electricity bills, rent and maintenance charges, other administrative costs have to be borne.</p>	<p>This is a new exemption request. Exemption/lowering GST rate will lead to cascading of input taxes and result in distortion of tax structure.</p> <p>No change recommended.</p>
79.	Exempt GST on film and entertainment industry including sale of tickets OR reduce GST to 5% uniformly on film and entertainment industry including sale of tickets.	<p>The industry has been severely hit by the pandemic. The producers are to pay GST irrespective of the fact whether the expenses incurred on making the film have been recovered or not. A uniform rate across states is required to reduce the disparity between Hindi Films and regional films.</p>	<p>Exemption/lowering GST rate will lead to distortion of tax structure. Further, providing exemption or special rates for a particular user group goes against the basic principles of GST. The GST rate applies uniformly across states.</p> <p>No change recommended.</p>

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80.	Waiver of GST for animation film on Sri Aurobindo made by Sri Aurobindo Society	On the 150 th birth anniversary of Sri Aurobindo, a freedom fighter, the society has decided to make an animation film on Sri Aurobindo's role in India's freedom movement to inspire youth and students of the country. The film is non-commercial in nature.	This is a new exemption request. Exemption for a specific case may not be desirable.
81.	To amend the law regarding Place of Supply of Intermediary service providers.	<p>Commission paid to Indian agents is included in the price paid by the importer and hence the commission is subjected to double taxation.</p> <p>Overseas suppliers export goods to Indian importers attracting a levy of customs duties. As per section 2(13) read with section 13(8) of the IGST Act relating to place of supply in case of cross border services, IGST at 18% is leviable on such commission as it is not considered as export of services.</p> <p>The intermediaries are unable to recover such IGST from their foreign customers, as they do not pay Indian taxes for which no credit/set off are available to them in their home countries.</p>	<p>CBIC vide Circular No. 159/15/2021-GST dated 20.09.2021 has already clarified the scope and nature of intermediary services along with illustrations.</p> <p>No change recommended.</p>
82.	Extend GST exemption to all payment intermediaries involved in settlement of transactions undertaken over digital networks upto Rs. 2000/-.	Settlement of payment through digital means requires minimum of 4 intermediaries viz. the Customer's Bank, Merchant's Bank, Fintech Company and an Aggregator (such as Transmart). Exempting only one part of the transaction [Merchant's bank] chain leads to blocking of ITC since the service of Transmart is exempt.	<p>Sl. No. 34 of Not. No. 12/2017- CT (R) exempts Services by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service.</p> <p><i>Explanation. — For the purposes of this entry, —acquiring bank means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.</i></p> <p>Therefore, exemption is to the</p>

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			<p>entity/person that makes the payment to any person (merchant in this case) who accepts such cards. In the instant case, Merchant bank is the acquiring bank as it only makes payment. Hence, this exemption is available to merchant banks and not to others.</p> <p>Request may not be accepted.</p>
83.	To exempt GST on overseas correspondent bank charges.	<p>GST authorities have taken a position that the banks in India are the recipient of services provided by the overseas correspondent bank and the charges charged by that overseas bank becomes part of consideration for the overall services rendered by the bank in India. Therefore, banks in India are liable to pay GST under the reverse charge mechanism.</p> <p>On the other hand, the banking industry has taken a position that the customer (and not the bank in India) is the recipient of the overseas bank's services for the following reasons:</p> <ul style="list-style-type: none"> - <u>no specific written contract</u> between banks in India and overseas correspondent bank(s). - E-transaction commences at the <u>behest of the customer</u> - Bank charges are not a cost of operation for the bank in India and the same are <u>borne by the customer</u>. <p>Further, FAQs published by CBIC on June 3, 2018 for the financial services sector, covering banks, NBFCs and insurance companies, clarified that in the present situation, there are two supplies namely, <i>one from the bank in India to the importer/exporter and one from the overseas correspondent banks to the bank in India</i>. Hence, the liability to discharge GST on such supplies will be required to be determined accordingly.</p>	<p>Overseas banks provide service to the recipient bank in India. The default place of supply provisions as prescribed in section 13(2) of the IGST Act will apply and consequently, <u>place of supply</u> is the location of the recipient which is India.</p> <p>IGST is levied on import of service and has to be discharged by the service recipient on <u>reverse charge basis</u> {Sl no 1 of notification No 10/2017-Integrated Tax (Rate) dated 28.06.2017 refers}, for which the recipient is entitled to ITC that can be utilised to set off tax liability.</p> <p>The domestic banks could avail ITC of tax paid by them on reverse charge. Hence, it is neutral regime.</p> <p>No change recommended.</p>

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		<p>For the first supply, (i.e., the bank in India to the exporter/ importer), the bank in India would be paying GST on the fee/commission income for the services provided to the customer.</p> <p>For the second supply, the bank in India would communicate the total charges deducted as overseas correspondent bank charges to the customer. Thus, the recipient (the customer) should pay IGST on the overseas bank's charges, under the reverse charge mechanism.</p>	
84.	GST be eliminated on management fees or extend the deemed export status for services rendered to AIFs.	<p>IVCA has submitted that investment management fee is the biggest expenditure for the AIF industry. Typically, such investment management fees constitute 2-3% of the value of the assets managed in an AIF per year. While management fees charged to VC/PE fund located in an offshore jurisdiction is exempt from GST, the management fees charged to an onshore fund located in India/ AIF attracts GST@18%. Since an AIF is only a pooling vehicle for investments and does not provide any service, there is no output GST liability and it is not able to utilize input tax credit of GST. Thus, this incremental GST becomes an additional cost for the foreign investors in the AIF and acts as an impediment to onshoring of funds into India via AIFs.</p> <p>2 Further, it is submitted that the impediments to onshoring from an income tax perspective has been addressed and a beneficial treatment from a Foreign Direct Investment (FDI) perspective has already been instituted. Thus, the economic and taxation policy should now address the GST challenge described above which is posing an impediment to onshoring of VCPE funds from overseas jurisdictions due to the incremental GST costs. A suitable clarification be issued under the</p>	<p>The said issues were also placed before the GST Council in its 43rd meeting held on 28.05.2021. The Council did not accede to the request.</p> <p>As such management of a fund, even if AIF is pass through, is a taxable service. Applicable tax is 18% on 2-3 % management fee. AIF could also avail ITC on their inputs (which also normally attract 18% GST).</p> <p>As regards place of supply, it is the recipient's location for such financial services. Hence, if AIF provided service (as per agreement, billing etc) to a recipient located outside India, they would be entitled to benefit of export of service if the other condition like receipt of consideration in foreign currency etc are met.</p> <p>Request may not be accepted.</p>

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		<p>GST regulations to elucidate the pass-through mechanism on the following bases:</p> <p>(a) The investors to the AIF are considered as the recipients as they bear the cost of fund management services; while the AIF only functionally uses such fund management for the making the investment;</p> <p>(b) The services provided by the Fund Manager are treated to be rendered to the investors who are ultimately liable to be pay for such services; and</p> <p>(c) The place of supply for the services provided by the Indian Fund Managers is the location of the investors investing in such AIF.</p> <p>3. It is also submitted that the Fund Managers providing the services should be accorded a proportionate export benefit on the fund management fees charged on foreign investments being pooled in the AIF upon meeting the specified conditions. The Fund Manager would need to raise tax invoices as prescribed under the GST law on the offshore investors (being the recipient of services) for claiming this export benefit. The quarterly declaration of foreign and domestic investments made by the AIF to the Securities and Exchange Board of India (SEBI) can be a basis to assess this. A similar approach has been adopted in various countries (especially Singapore), including via offering outright exemptions.</p>	
85.	To rationalize/reduce the GST on services in the capital market sector and reduce it to 12 % from 18 %.	The capital market in India is burdened with numerous transaction cost which includes various direct and indirect taxes, i.e., STT, GST, Stamp Duty, etc. Capital market has continuously seen an upswing in the service tax/GST rates from a nominal 5% to 18%. Reducing the rate will help stimulate further demand and attract	There is not much rationale for a concessional GST rate on services in the capital market services. GST rates have been fixed based on after detailed deliberations, considering, inter alia, the past tax incidence, the tax applicability on inputs and the revenue neutrality of GST rates. Lowering GST rate will lead

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		investments.	to cascading of input taxes. No change recommended.
86.	Restriction (with respect to non-availment of ITC), prescribed under entry 7(ii) of Notification No. 11/2017-CT (rate) dated 28.06.2017 may be relaxed at least where input and input services are used for any activity which is obligatory for an employer to provide the same to its employees under any law (time being in force) thereby aligning the same with provisions contained in Section 17(5) of the CGST Act, 2017.	<p>1. Sec.17(5)(b) of the CGST Act, 2017 allows ITC on food and beverages, outdoor catering etc. is allowed provided it is obligatory for an employer to provide the same to its employees under any law for the time being in force.</p> <p>2. However, entry 7(ii) of Notification No. 11/2017-CT (rate) dated 28.06.2017 disallows the availment of the ITC while prescribing 5% GST rate.</p> <p>3. Relaxation in this regard will remove the dichotomy present in GST Law.</p>	<p>ITC is blocked on restaurant and catering services. However, there is no bar in entry 7(ii) of notification No. 11/2017-CT (rate) on the recipient of food and beverages for availing ITC if otherwise eligible for such ITC in terms of section 17(5)(b), could avail ITC (obligatory services to be provided an employer).</p> <p>No change recommended.</p>
87.	(a) Request for restoration of ITC for restaurant industry by revising the GST rate to 12% with ITC; (b) To provide two rates of GST for restaurant service i.e., existing 5% without ITC and also new rate of 12% with ITC (similar to service of goods transport agency)	<p>(a) The requested new rate of GST at 12% with ITC would address the concerns of 6 Lakh numbers of restaurants who have ITC more than 4 to 8 % of their turnover. It may be noted that any additional benefit to industry will result in benefit to the end customers. Thus, it is a win – win situation both for the industry/Government as well as the consumers.</p> <p>(b) GST may be increased from 5% to 12% with ITC as an option to restaurants. Nearly 50% of the inputs are from unregistered service providers to reduce to operating cost by 4%. Input costs are high from rent, air conditioners, furniture, manpower</p>	<p>The 23rd GST Council meeting held on 10 November 2017 based on the recommendations of GoM recommended the rate of 5% without input tax credit on restaurant service.</p> <p>Further, 37th GST Council meeting held on 20.09.2019 did not accede to the request for giving two rates for restaurant sector.</p> <p>No change recommended.</p>

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	<p>(c) To continue existing rate of GST for restaurant service provided by standalone restaurants, dhaba, canteen etc @ 5% without ITC.</p> <p>(d) Request to rationalise GST rates for restaurant sector with three tier tax structure on the lines of hotel industry as follows: Restaurant companies with turnover of upto Rs 2 cr @ 0% GST. Restaurant companies with turnover above Rs 2 cr but less than Rs 7.5cr @ 5% GST. Restaurant companies with turnover above Rs 7.5 cr @ 12% GST with ITC.</p>	<p>supply, performing artists.</p> <p>Government is losing revenue in excess of Rs 4,000 crores per annum because of break in the supply chain of restaurant due to ITC blockage. Also, growth of restaurant chains has decreased and more than 20,000 restaurants closed down in previous financial year due to high input costs and COVID pandemic.</p> <p>(c) The Covid pandemic has affected the restaurant sector adversely. Nearly 40% of all restaurants are facing complete closure permanently due to lockdowns.</p> <p>There is low footfall of customers at restaurants and high fixed costs such as electricity, rents and staff wages amongst others.</p> <p>(d) Hospitality sector is the highest employment generator in the vertical and due to pandemic, there have been severe job losses.</p> <p>Further, restaurants in the organised sector are severely hit by the denial of ITC on food services and also led to loss of revenue to government</p>	
88.	<p>(a) To rationalize GST rates prevalent on food items being served by hotel.</p> <p>(b) To enhance the threshold limit of hotel room tariff for charging 18% GST from Rs 7500/- to Rs 9500/-.</p> <p>(c) Enhance the</p>	<p>The GST on hotel accommodation for rooms with room tariff above Rs 7500/- is 18% and between Rs 1000/- to Rs 7500/- is 12%. However, the GST on food items served in these hotels have not been rationalized accordingly, which in turn raises the cost of staying/dining at hotels.</p> <p>Raising the threshold will bring parity of rates between the Rupee and the dollar. While the threshold was fixed at Rs 7500/-, the exchange rate of Dollar per Rupee stood at 64, but the same reached at Rs 76</p>	<p>Presently, on restaurant service, GST is charged at two rates- at the rate of 5% (without ITC) for all restaurants except the restaurants in premium hotels, and at the rate of 18% with ITC in case of restaurants in premium hotels.</p> <p>The Council after extensive deliberation and discussion, in its 37th meeting held on 20th September, 2019, while rationalizing the GST rate on room rent in hotels (exempts upto Rs1000, 12% for rent between Rs1001-Rs7500 and</p>

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	threshold limit for GST exemption for hotel rooms from Rs 1000/- to Rs 2000/- .	<p>per dollar today.</p> <p>It will boost the lower budget segment, which in turn will encourage more domestic travellers to venture out and thereby promote the tourism sector in a big way. Under the present situation, where foreign travel is almost zero, promotion of domestic tourism is the need of the hour.</p>	<p>18% for others), also recommended to continue GST at the rate of 18 % with input tax credit (ITC) on the restaurant service supplied in premium hotels i.e., hotels having room tariff of above Rs 7500 per unit per day.</p> <p>No change recommended.</p>
89.	To clarify as to whether Paytm which facilitates the booking of food and beverages supply only through electronic platform is required to undertake GST compliance under section 9(5) of the CGST Act, 2017.	<p>Paytm is an ECO which offers technology driven services to support booking and collecting consideration from the end customers for various food and beverages (F&B) offered by restaurants, cinema theatres etc. (suppliers). Paytm does not run a food delivery application and at no point in time is involved in the delivery of any F&B.</p> <p>The onus and infrastructure to supply F&B is the sole responsibility of suppliers and Paytm provides a platform to book such supplies of F&B.</p>	<p>The Paytm app has a sub heading called Discover with App. Under that heading, when we opt for order for food, it may show “Mini App Store”, which enables users to order food via their app. There are two options namely Order-In and Dine-Out are available there-.</p> <p><u>Order-in:</u> In Order-In, there are various restaurants listed and the users can click on the restaurant of their choice and it is <u>redirected to the web page</u> of the said restaurant, wherein further options given by the restaurant are available such as delivery/take away/dine in.</p> <p>In this case, the page is redirected to the webpage of the respective restaurant. Paytm acts as a payment gateway as well, for making payment on the webpage of the respective restaurant.</p> <p><u>Dine-out:</u> In Dine Out there are <u>various deals</u> that are offered on the platform such as multicourse meal deals, buffet deals, pizza deals, deals on drinks, thali deals and so on. Various offers and deals of restaurants, including vouchers are listed on their platform. There are <u>two offers</u> available in the Dine Out option, namely, <i>cash voucher</i> and <i>booking</i> buffet/combination meals such as brunch plus drinks (alcoholic/soft drinks) etc.</p>

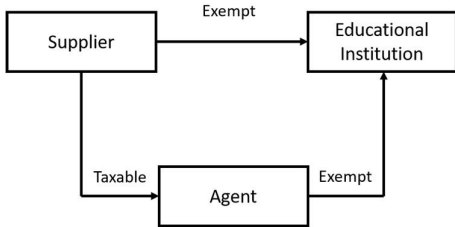
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			<p><u>In case of cash vouchers-</u></p> <p>As seen from the details available on Paytm platform, it has been mentioned that it is a voucher which is being issued. Voucher is defined in the CGST Act, 2017 under section 2(118) as follows:</p> <p>“voucher” means an instrument where there is an obligation to accept it as <u>consideration</u> or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;”</p> <p>It is evident from the details as provided on Paytm platform that there is an obligation to accept it as consideration or part consideration for supply of restaurant service.</p> <p>In the case of booking pre-customized <u>buffet/combination meals</u> which are booked on the Paytm platform, the details of the validity/terms as specified on Paytm platform are as follows:</p> <ul style="list-style-type: none"> • Timings are clearly defined [For instance, a certain booking is not valid on Saturday/Sunday and certain dates as specified and is valid between 12.30pm to 03.30pm on weekdays] • Applicable for dine-in and not valid for takeaway/home delivery • Non-cancellable • Valid for 30 days from purchase • The email voucher has to be presented at the restaurant • Prior mandatory reservation has

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			<p>to be made at the restaurant</p> <ul style="list-style-type: none"> • Inclusive of all applicable taxes and service charges • Cannot be clubbed with any other offer • Menu is clearly specified <p>It can be seen that in this case payment is made as a consideration of restaurant service only.</p> <p>Paytm has also informed to have deducted TCS u/s 52 of CGST in these scenarios.</p> <p>In view of the above, it may be seen that Paytm is engaged in different activities associated with supply of restaurant services viz. as a gateway redirecting customers to various webpages of restaurants, as a payment gateway, as an issuer of voucher as consideration. Whether a particular supply of service is made by an assessee is depending upon the facts of the case and if a supplier needs some certainty, they may approach advance ruling.</p>
90.	<p>(a) Reimbursement/exemption of GST for all businesses and tourism industry for a period of 1 – 5 years for stabilization and providing a regenerative environment in Ladakh.</p> <p>(b) Request to reduce GST on the tourism sector for the UT of Ladakh.</p> <p>(c) GST waiver for</p>	<p>Tourism is the predominant industry of Ladakh with travel industry accounting for more than 60% of the economy.</p> <p>Ladakh usually faces a steep drop in business during the winter season. And coupled with the repercussions of Covid - 19 pandemic, the region is estimated to have slowest economic recovery.</p> <p>The dependency of local economy of Ladakh is very high on tourism sector, thus there is a strong demand from the stakeholders to reduce the GST rate on tourism.</p>	<p>Exemption/lowering GST rate will lead to cascading of input taxes and result in distortion of tax structure. No rationale.</p> <p>Tourism service is already taxed at the lowest slab of 5% GST with ITC of input services in the same line of business.</p> <p>Any reduction of GST rate on tourism for a particular state/UT would be against the spirit of one nation, one tax.</p> <p>However, a separate proposal has been submitted before the Council for providing relief to tourism industry considering that they have issues like non eligible ITC etc.</p>

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
	three years to travel agents/tour operators in J&K (d) GST waiver/reduction/deferment for three years for hotels, guest houses, restaurants, cafes and houseboats/shikaras in J&K.		No change recommended.
91.	1. Removal of Anomalies of GST on cruise ticket booking. 2. Removal of GST on import of cruise ships.	<p>Sale of cruise tickets / packages attracts GST at a rate of 18% while sale of airline tickets attracts GST of 5% for economy class and 12% for other classes.</p> <p>Imposition of GST@ 18% on cruise tickets is dissuading Indian and foreign nationals from boarding a cruise ship from any port in India. Most of the other foreign ports do not impose any GST on cruise tickets. The Indian cruise ship owners also indicated that most of the passenger transport service either are zero-rated or attract GST @ 5% on economy class and @ 12% on other classes.</p> <p>Indian cruise tourists when they purchase cruise tickets in India for taking cruise from foreign ports have to pay 18% GST. When the same tourist purchases tickets from foreign agent there is no GST as the service is being provided abroad. Thus, foreign agents earn profit on sale of tickets.</p> <p>India does not manufacture any cruise ships. These have to be imported and attract IGST at the rate of 5%. Imposition of 5% IGST on import of vessels will be a huge disincentive for Indian entities intending to start their own cruise services. In pre-GST regime, cruise ships were exempted from such an equivalent custom duty and the IGST should be exempted on import of</p>	<p>Proposals to reduce GST on cruise shipping have been examined earlier on the following occasions:</p> <ul style="list-style-type: none"> • Fitment Committee meeting held on 9th & 10th July, 2018 • 28th GST Council meeting held on 21.07.2018 • 31st GST Council meeting held on 22.12.2018 • 9th Inter Ministerial Coordination Committee for Tourism Sector (IMCCTS) held on 23.07.2019 • 37th GST Council meeting held on 20.09.2019 • Reference received from NITI Aayog <p>The proposal to reduce GST on cruise shipping were discussed and not agreed to each time.</p> <p>GST rate on cruise travel (18%) cannot be compared with or equated with GST rates on transport of passengers by air (5% without ITC in economy class and 12% in business class). ATF used by airlines is outside GST and attracts excise duty, VAT besides other indirect levies. Its ITC is not available for paying GST on the output service of transportation by air. However, cruise ships use predominantly bunker fuel</p>

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
		cruise vessels in India.	<p>which is within GST. Bunker fuels for use in ships and vessels (IFO 180 CST and IFO 380 CST) attract 5% GST and its ITC is available. Further, ITC of all input goods, services, capital goods are available to a cruise ship and therefore, it attracts rate of 18%.</p> <p>The service provided by a cruise is not equivalent to transportation of passengers as the objective of the cruise is to provide luxury accommodation along with entertainment and recreation on board. Quite often the amount charged is for the duration of the stay on board, based on the tour package and also depending upon the class of accommodation booked onboard. It is also important to note that at times the place of embarkation and final destination are same in case of cruise packages. Therefore, equating the same to passengers' transportation service may not be appropriate as the service is more akin to hospitality service. [For comparison the accommodation services attract GST @ 18% for accommodations having tariff above Rs 7500/-, and admission to entertainment events attract GST @ 28%]</p> <p>The 5% IGST levied on import cruise ships falling under heading 8901 is available as ITC for payment of GST on supply of services. In so far as Customs duty on cruise ships is concerned, BCD is exempt on the import of cruise vessels.</p> <p>No change recommended.</p>
92.	Reduce rate of GST on online media from 18% to 5%.	Outdoor Advertising known as Out of Home (OOH) events has been adversely affected in the wake of the COVID pandemic. Outdoor media is taxed at 18% while newspaper advertising is taxed at 5%.	This is a request for new exemption. It was taxed in service tax regime also at the standard rate. Further, the consumer base of newspaper and online portals are very different. Also, this is mostly a

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
		Outdoor media owners buy rights from Municipal Corporations, Railways, Airport Authority, Metro etc and as per their contract they are bound to pay full licence fee in any condition, whether they get their business or not. Outdoor media has become the last option for every campaign whereas newspapers, TV, radio, social media are gaining priority over outdoor media advertising resulting in reduced budget for the latter.	business service and recipient could avail ITC. Request may not be accepted.
93.	Request to: a. reduce taxes on all the production processes and raw materials used for publication of educational books to 5% b. abolish GST which is payable on RCM basis on payment of Royalty to Authors for writing educational books and materials. c. allow to claim refund of the Input tax paid.	GST is being paid at every stage of the publication process –from purchasing papers, plates to various production processes like printing, binding, lamination, transportation and even on royalties (under RCM). However, as books are under exempt category, it is not allowed to collect GST from end consumer and also not allowed to claim set off of input tax paid at various stages of production. The GST paid is nearly 450% of the taxes paid under VAT regime. In VAT regime, it was allowed to claim refund of input the VAT paid on the inputs after remission and it helped to keep the cost of books low.	Request amounts to Zero rating / deepening of exemptions. May not be accepted.
94.	To exempt supply of online journals when supplied to a person other than educational institution also OR To make the entire	Supply of online journals to educational institutions is exempt from GST vide Notification No. 12/2017-CT (R) dated 28.06.2017. Supply of online educational journals and periodicals are subject to GST when supplied to recipients other than	Supply of online journals to educational institutions was exempted from GST w.e.f 25.01.2018. While supply of online journals directly to educational institutes is exempt, the same through vendors is not eligible for exemption.

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
	<p>value chain taxable.</p> <p>(b) To remove the distinction in taxability of print and digitized versions of journals</p> <p>Reference: SAGE Publications India Pvt. Ltd.</p>	<p>educational institutions.</p> <p>Accordingly, when online journals supplied to educational institutions through subscription agents, suffer GST as shown below. This, defeats the purpose of exemption.</p> <p>SAGE has informed that around 60-70% of the journals' business is routed through distributors/subscription agents.</p>  <pre> graph LR Supplier[Supplier] -- Exempt --> Institution[Educational Institution] Supplier -- Taxable --> Agent[Agent] Agent -- Exempt --> Institution </pre> <p>Part of the supply chain (from supplier to agent) is taxable while the next leg of supply from supplier's agent to educational institutions is exempt. This leads to blockage of credit and hence, additional cost to education sector.</p> <p>Further, while the print journals are exempt from GST irrespective of the recipient, the online journals are subject to tax if supplied to other than educational institutions. This distinction dilutes Government's vision of Digital economy.</p>	<p>However, rate differential in such a situation is unavoidable, particularly if the intention is to exempt input services provided to the educational institute is concerned.</p> <p>Status quo may be maintained.</p>
95.	Reduce rate of GST on dry-cleaning and laundry service from 18% to 5%.	<p>GST rate on job work services in textile sector is 5%.</p> <p>The services of dry cleaning and laundry are similar to that of job work services.</p> <p>Further, it is a labour-intensive sector and provides employment to a lot of people. Further, if the rates are reduced, it will make our exports competitive since dry cleaning and laundry are an important part</p>	<p>Dry cleaning service was taxed in service tax regime at the standard rate.</p> <p>Threshold exemption upto Rs 20 lakhs composition scheme upto Rs. 50 lakhs (@6%) is available.</p> <p>Further, in case of exports, the ITC of the inputs and input services is available as refund. Thus, it does not become cost.</p>

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
		for export of garments.	No change recommended.
96.	Request to have 3% GST (without ITC) on the monthly charges being levied by RWAs, irrespective of the amount.	<p>Rationalize the GST on the maintenance charges being levied by RWAs: Currently apartments incurring over Rs. 7500/- as maintenance are required to pay 18% GST.</p> <p>Living cost further goes up as RWA has to recruit a CA to do input output GST reconciliation and reversals.</p> <p>In this regard, it is requested to have one single rate of tax 3% for all irrespective of amount, no input tax. This arrangement will ward off unnecessary tax compliance burden on the residents.</p>	<p>New rate of 3% GST (without ITC) on the monthly charges, irrespective of amount collected, may unnecessarily put burden on the residents who are currently exempt from GST.</p> <p>Moreover, recourse to lower rated with restriction of ITC should generally be avoided in GST, as it results in blockage of credit and goes against the seamless transfer of ITC under GST.</p> <p>No change recommended.</p>
97.	Request to increase the limit of contribution made to Resident welfare associations (RWA) by the members from Rs 7500 to Rs 10,000.	It is requested to increase the present limit of Rs. 7,500/- to Rs. 10,000/- as several limit input costs have increased in the urban areas and with this, monthly maintenance fee has also increased.	<p>The decision to increase the limit from Rs 5000 to Rs 7500 was taken by the GST Council in its 25th meeting held on 18.01.2018 [S.N. 15, Annex –I, Vol 2] after due deliberation.</p> <p>It has revenue implication, may not be accepted.</p> <p>No change recommended.</p>
98.	GST exemption of services provided by the NCISM (National Commission for Indian System of Medicine) and NCH (National Commission for Homoeopathy), being the statutory regulatory authorities.	<p>National Commission for Indian System of Medicine (NCISM) and National Commission for Homoeopathy (NCH) are regulatory authorities constituted in the year 2021 under the NCISM Act, 2020 and NCH Act 2020 respectively.</p> <p>They carry out inspections of medical institutions of Indian System of Medicine & Homoeopathy for assessing the compliance of standards before rating of colleges and granting permissions.</p> <p>Hence, the fee collected by the Commissions in executing the statutory requirement may not be considered as a Service.</p>	<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.</p> <p>In the 45th GST Council meeting, request of International Financial Services Centres Authority which is a regulatory body for International Financial Services Centres to exempt the fee charged by them from GST was not accepted.</p> <p>No change recommended.</p>

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
99.	Whether career guiding course (like MPSC, UPSC preparation courses) which are approved by the university and run by colleges are taxable or exempt?		<p>Services provided by an educational institution to its students, faculty and staff are exempt vide Sl. No. 66 of not. No. 12/2017 dated 28.06.2017.</p> <p>However, guidance courses for MPSC/UPSC preparation are not the courses covered in definition of education services in either in form of education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force or, education as a part of an approved vocational education course.</p> <p>Therefore, these courses are liable to GST without any doubt.</p> <p>No change recommended.</p>
100.	<p>Request to:</p> <p>(a) Relieve ICRISAT from compliances like registration and return filing etc. under the GST laws for outward supplies.</p> <p>(b) Exempting all outward supplies of ICRISAT from GST ; or</p> <p>(c) notifying all outward supplies of ICRISAT under Reverse Charge Mechanism (RCM).</p>	<p>ICRISAT has granted privileges, benefits and exemptions under the United Nations (Privileges & Immunities) Act, 1947.</p> <p>Activities of ICRISAT include: capacity building, organization of international, national scientific conferences and seminars, training and workshops, meetings, and other agriculture related events, disposal of old and used machinery/ equipment/ goods, used vehicles, waste and scrap etc. including disposal of hazardous waste etc.</p> <p>ICRISAT partners with government agencies (central/state agencies), research institutions, universities, ICAR, students and researchers of government institutions.</p> <p>If outward supplies of ICRISAT are notified under RCM, entities like PSUs, state seed corporations, corporates and other similar private bodies/organizations, NGOs and other GST registered bodies/organizations will be liable to pay</p>	<p>Request to exempt all outward supplies of goods and services made by International Crops Research Institute for semi-arid tropics (ICRISAT) was earlier considered by the 45th GST Council meeting held on 17.09.2021 and rejected.</p> <p>As regards the request to place all their output supplies under RCM, ICRISAT was requested to inform the exact description and details of outward supplies of goods and services which ICRISAT wanted to be put under RCM, the recipients of those supplies and the persons/organizations which will become liable to pay GST under RCM on those supplies.</p> <p>The statement of ICRISAT that Government departments and institutions, ICAR , individuals like scientists, students and researchers from government institutions, universities and government research organizations will not be the recipients of taxable</p>

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
		<p>GST under RCM.</p> <p>Government departments and institutions, ICAR, individuals like scientist, students and researchers from government institutions, universities and government research organizations will not be the recipient of taxable supplies from ICRISAT and hence they will not have any liability to pay GST under RCM.</p> <p>ICRISAT does not make any supply to farmers directly.</p>	<p>supplies from ICRISAT and hence liable to pay GST under RCM appears to be contradictory to their own statement that they partner with government agencies (central/state agencies), research institutions, universities, ICAR, students and researchers of government institutions.</p> <p>Reverse charge mechanism is primarily aimed at reducing compliance burden on small service providers in unorganized sector.</p> <p>Services of ICRISAT are consumed by scientists/ researchers / public authorities/ Government Departments/ research institutes/NGOs/PSUs/ State Seed corporations etc. Disposal of old and used machinery/ equipment/ goods, used vehicles, waste and scrap etc. is also expected to be done to individuals or small organizations. If the supplies of ICRISAT are placed under RCM, it will put compliance burden on scientists/ researchers / public authorities/ Government Departments/ research institutes/NGOs/State seed corporations etc. unless ICRISAT excludes them from its activities of capacity building, scientific conferences and seminars, training and workshops and other agriculture related events, disposal of old and used machinery/ equipment/ goods, used vehicles, waste and scrap etc.</p> <p>Shifting the tax liability from ICRISAT to scientists/ researchers / public authorities/ Government Departments/ research institutes/NGOs etc. under RCM, would be contrary to the objectives of collecting tax under RCM and add to the administrative burden of collecting tax from numerous recipients</p>

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
			<p>instead of the single service provider.</p> <p>Even the Rajya Sabha and Lok Sabha Secretariats have not been granted any exemption from registration. Their request in this regard was rejected in the 25th GST Council meeting.</p> <p>In view of the discussion above, we may not accede to the request of ICRISAT to notifying supply of all goods and services provided by ICRISAT under reverse charge.</p> <p>No change recommended.</p>
101.	<p>A. Request of rolling back of amendment vide notification No. 15/2021- CTR dt 18.11.2021,</p> <p>OR</p> <p>B. Transferring of the State Funded and Central Funded projects like Irrigation, Medical, Educational infrastructure and the like from the existing 3(iii) to 3(iv) of Notification No. 11/2017 Central Tax (Rate), dated the 28th June 2017.</p>	<p>A large share of welfare & development works in Andhra Pradesh are being executed through Corporations or SPVs.</p> <p>The additional burden would only displace expenditure from development works.</p> <p>As per the amendment, roads and housing will continue to be taxed at 12% whereas irrigation projects executed by governmental authorities and government entities will face 18%.</p> <p>It is most likely that several SPVs would be shut down and their work transferred to the government departments.</p> <p>Even where the works are undertaken by a Government Entity, the actual sanctioning, Budget, Collateral guarantees etc. are from the State Governments only. Thus, in all practical sense, these are projects by the Government.</p> <p>In many cases, the contracts are entered at a fixed consideration inclusive of all taxes. A 6% increase of the overall cost of the project is a huge incidence for any contractor.</p> <p>Out of the proposed 6% hike, 3% will accrue to State Governments and 3% to Central Government. Out of the 3%</p>	<p>Decision to withdraw concessional rate of GST on works contract supplied to governmental authority and government entities was taken by GST Council after detailed deliberations.</p> <p>The decision is more or less revenue neutral for the States and Centre. It is expected to reduce interpretational disputes and plug revenue leakages. Lower rate on works contracts results into inversion as most of the inputs are at 18% and cement is at 28%.</p> <p>No change recommended.</p>

Sl. No.	Request	Details of Request	Fitment Committee discussions and recommendation
		additional revenue to Central Government, almost 40% will any way devolve back to state Governments. In all, there will be limited incremental revenue increase for any of the governments.	
102.	To reduce/exempt GST on Business Correspondent services provided to urban poor/migrant workers.	<p>The department has already exempted Business Correspondent services/intermediary services provided by Business Correspondent to a banking company w.r.t accounts in its rural area branch or PMJDY accounts from GST vide sl. No 39 of notification No. 12/2017- CTR dated 28.06.2017.</p> <p>As nearly 50% transactions in BC platform pertain to urban poor/migrant workers who are vulnerable groups needing BC services, GST may be reduced or made nil.</p>	<p>It is a request for new exemption. Exemption/lowering GST rate will lead to cascading of input taxes and result in distortion of tax structure.</p> <p>Banking companies are entitled to ITC of GST paid on services of business correspondents.</p> <p>No change recommended.</p>

f) Issues deferred by the Fitment Committee for further examination in relation to services - Annexure VI

Annexure-VI

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
1.	To notify a mechanism for availment of ITC in cases where passenger transportation services by AC buses are supplied through an e-commerce operator (ECO).	<p>The applicant hires AC buses from bus owners. The bus owners charge GST from the applicant.</p> <p>Thereafter, the applicant provides passenger transport services wherein the ticket price charged from customers includes the cost of fuel.</p> <p>Passenger transport services attract GST @ 5% with ITC of services in same line of business.</p> <p>Earlier, the applicant was discharging GST on outward supply of passenger transport services by utilizing ITC of input service that is, leasing/renting of buses.</p> <p>However, w.e.f 1.1.2022, ECOs were made liable to pay tax under Section 9(5) of CGST Act in respect of services by way of transportation of passengers by any motor vehicle.</p> <p>Therefore, the liability to pay tax in respect of passenger transportation services provided by AC buses shifted from</p>	<p>ECOs were liable to pay GST on passenger transportation services by a radio taxi, motor cab, maxi cab, motor cycle supplied through them. However, w.e.f. 1.1.2022 ECOs have been made liable to pay GST on passenger transportation services supplied through them using any motor vehicle including buses.</p> <p>The same was done at the request of the industry to reduce compliance burden faced by small bus operators. However, an option in this situation could be to restrict Section 9(5) to only those cases where the service provider supplying the said service through ECO is not registered under GST, as has been the case with hotel accommodation and housekeeping services.</p> <p>It was broadly discussed that if bus owners supplying through ECOs want to avail ITC, they should pay tax at the rate of 12% with ITC. In case the bus owners want that the ECOs should continue to be liable to pay taxes on services supplied through the ECO, they would have to forego the ITC accumulated. The ECO in such scenario would continue to pay tax at 5%.</p> <p>However, in order to understand the ramifications of the aforesaid change, it was decided to gather more data on the issue.</p> <p>The matter may be deferred.</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		<p>applicant to ECO.</p> <p>The issue which has arisen due to the aforesaid change is that ITC of input services is getting accumulated with the applicant as there is no mechanism on GST portal to transfer ITC to ECO for payment of tax.</p> <p>The ECO, thus has to discharge the entire GST liability in cash despite significant ITC accumulation with the service provider.</p> <p>The applicant has requested that (a) the GST portal be suitably amended so that the ITC available to actual service provider is reflected in electronic credit ledger of ECO or (b) a facility should be made available to actual service provider so that he may transfer the ITC available in his electronic credit ledger to the ECO.</p>	
2.	To clarify the nature and taxability of various supplies in relation to cryptos eco-system.	<p>Crypto industry in India has been facing various challenges, concerns and scepticism like any new industry.</p> <p>The Virtual Digital Assets (VDA) industry has seen astronomical growth despite ambiguities around regulations. Two unicorns have come into existence.</p>	<p>Crypto assets refer to algorithm based decentralized convertible virtual asset protected by crypto-graphy.</p> <p>Crypto ecosystem involves various activities including mining, exchange services, wallet services, payment processing, barter system, and other different transactions etc.</p> <p>Recently, definition of Virtual Digital Assets has been proposed to be inserted in IT Act by Finance</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		<p>Finance Bill provision of 1% TDS (Direct Tax) on all VDA transactions and disallowing set off is expected to adversely affect the sector.</p> <p>Any additional tax, such as GST will further pose a challenge to this industry.</p>	<p>Bill, 2022 as follows:</p> <p><i>‘(47A) “virtual digital asset” means—</i></p> <p><i>(a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;</i></p> <p><i>(b) a non-fungible token or any other token of similar nature, by whatever name called;</i></p> <p><i>(c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify</i></p> <p>....</p> <p>Further, by way of inserting Section 115BBH in IT Act, income from transfer of such virtual digital asset is taxed @ 30% and by way of Section 194 S, provisions for deducting TDS @ 1% are also proposed to be inserted.</p> <p>RBI circular of 2018 prohibited banks and financial institutions from dealing in, and providing services for facilitating dealing in virtual currencies.</p> <p>However, the circular was struck down by the Hon’ble Supreme Court in the case <i>Internet and Mobile Association of India Vs RBI, 2018</i></p> <p>According to the Lok Sabha bulletin dated 23.11.2021, a Bill in this regard is on the anvil</p>

Sl. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			<p>and is to be introduced in the Parliament.</p> <p>Therefore, it is required to identify all relevant supplies associated with crypto-ecosystem which are under the ambit of GST; their nature whether those activities are goods or services; their applicable rate based on appropriate classification etc.</p> <p>Fitment Committee discussed in detail various activities associated with crypto currencies & NFT and taxability thereof. It was felt that the issues involved in crypto ecosystem need deeper study. It was decided that Haryana and Karnataka shall study all aspects and submit a paper before the Fitment Committee in due course.</p> <p>The issue may be deferred.</p>

5. The proposals, as contained in para 4 above are placed before the GST Council for consideration.

Agenda Item 7: C-PACE Project for Ease of Doing Business in India

1 A proposal was received from Ministry of Corporate Affairs stating that they are planning to launch a Centre for accelerated exit under its broader mission of Ease of Doing Business in India. Centre for Processing Accelerated Corporate Exit (C-PACE) has been announced as part of the Budget Speech 2022 and will be established through Government Process Re-engineering in order to process all applications filed for voluntary exit centrally.

2 Further, they have stated that one of the requirements for disposing such applications is to get comments or objections from Government Ministries/ Departments and Regulatory Agencies. As part of the C-PACE, the comments will be submitted online.

3 Since the initiative is to be launched in a time bound manner, they requested DoR to nominate Primary and Secondary Nodal Officers (from CBDT, GSTN, ED) for the purpose and to forward their names and emails to Ministry of Corporate Affairs at early date. These Officers will be provided credentials to submit observations on behalf of the concerned Ministry/Department or Regulatory Agency.

4 Additional Secretary (Revenue) held a meeting with the officers of CBIC and CBDT on 6th April, 2022 and it has been decided that since nodal officers will take feedback from field formations before giving any consent or clearance, it will be more practical to have CBIC officers at the national level as Nodal Officers to handle the issues related to GST on behalf of both Central as well as State Jurisdiction. The appointment of CBIC officers as Nodal Officers to deal with GST issues would be placed before the GST Council for approval.

5 Given below are the particulars of the officers nominated as Nodal Officers to handle the issues related to GST on behalf of both Central as well as State Jurisdiction.

Nodal Officer	Name of Officer	Designation	Email-Id	
Primary	Shri Rajinder Singh	Commissioner/ADG (TAR), Directorate General of Performance Management (DGPM), New Delhi	r.singh93@nic.in	CBIC
Secondary	Shri Mukesh Kumar	Joint Director, (TAR), DGPM, New Delhi	mukesh.irs@nic.in	

6 Accordingly, the above agenda is placed before the GST Council for approval.

Agenda Item 8: 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 2022-23 vis-à-vis FY 2021-22.

Figure 1: Monthly gross GST collection (in ₹ lakh crore)

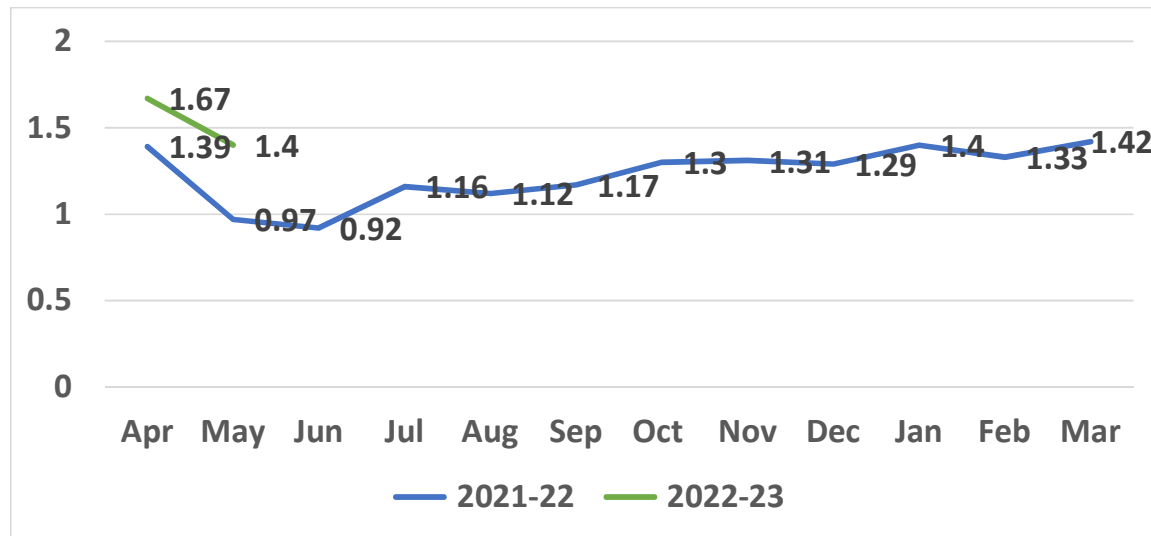


Table 1: Monthly gross GST collection (₹ crore)

GST Collection	Jan'22	Feb'22	Mar'22	Apr'22	May'22
CGST	24,869	24,435	25,830	33,159	25,036
SGST	32,239	30,779	32,378	41,793	32,001
IGST	74,182	67,471	74,470	81,939	73,345
<i>Domestic</i>	36,983	33,634	35,339	45,234	35,876
<i>Imports</i>	37,199	33,837	39,131	36,705	37,469
Comp Cess	9,696	10,340	9,417	10,649	10,502
<i>Domestic</i>	9,160	9,702	8,436	9,792	9,571
<i>Imports</i>	536	638	981	857	931
Total	140,986	133,026	142,095	167,540	140,885

2. Table 2 shows the IGST collected, refunded and settled/apportioned during FY2022-23 till May, 2022.

Table 2: IGST Collection/Settlement/Appportionment/Refund in FY22-23

(Figures in Rs. Crore)

1	Collections (+)	153299.00
2	Recovery from IGST Ad-hoc apportionment (+)	0
3	Refunds (-)	27329.00
4	Settlement (-)	
	i. CGST	61347.00
	ii. SGST	50085.00
5	Ad-hoc Settlement (-)	0
	i. CGST ad hoc	0
	ii. SGST ad hoc	0
6	Net (1+2-3-4-5)	14538.00

Source: PrCCA, CBIC

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 May 2022 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	2022-23
						(till May)
Opening Balance		21,466	47,271	55,736	9,734 [^]	9,344
Compensation Cess collected (net)	62,612	95,081	95,551	85,191	1,04,609	20,638
Compensation released	41,146	69,275	1,20,498	1,36,988	97,500	89,783
Balance	21,466	47,271	55,736*	3939	16,844 ^{\$}	(59,801)

* 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 had transferred Rs. 5,795 crore from CFI to cess fund as part of an exercise to apportion balance IGST pertaining to 2018-19 on 08.03.2022

^{\$} Balance GST compensation cess available is Rs. 16844 crore. However, taking into account the interest of back to back loan of Rs. 7,500 crore, GST compensation cess carried forward to FY 2022-23 as opening balance is Rs. 9344 crore

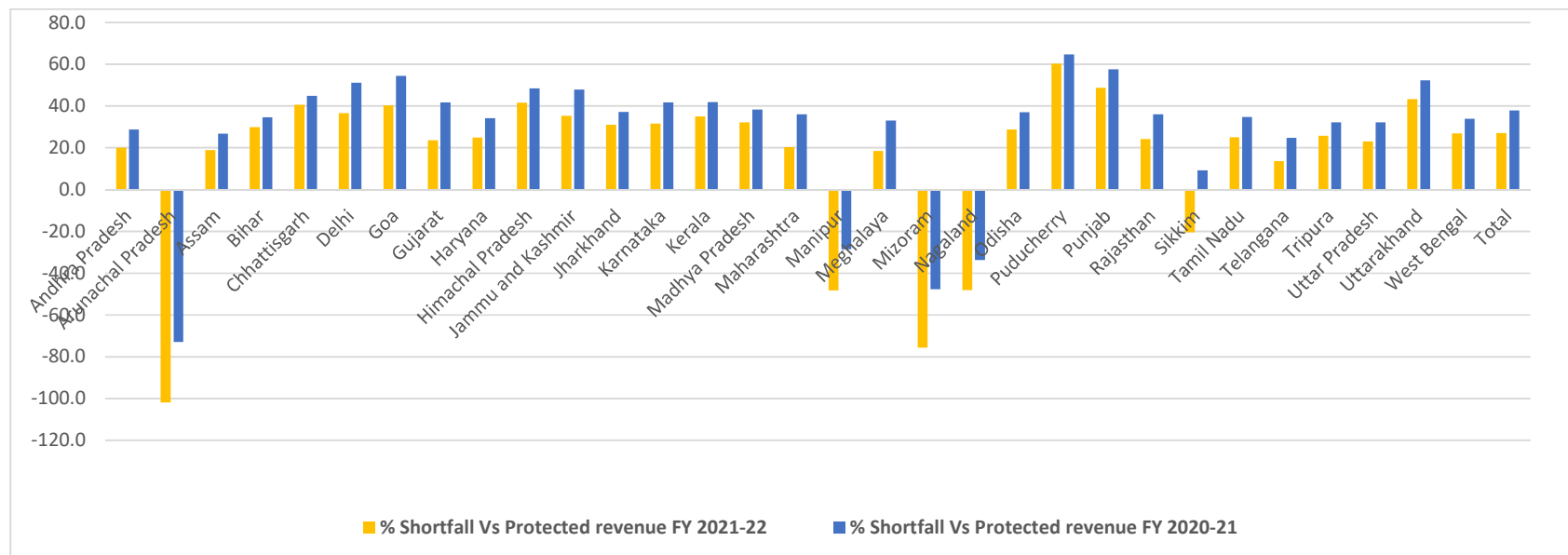
Gap with respect to base Revenue

4. The State-wise details of gap between the protected revenue and the post settlement gross SGST revenue (including ad-hoc settlement) for FY 2021-22 as compared to 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 March

	State/UTs	2020-21(%)	2021-22(%)
1	Andhra Pradesh	28.8	20.1
2	Arunachal Pradesh	-72.9	-101.9
3	Assam	26.7	19.0
4	Bihar	34.7	30.1
5	Chhattisgarh	44.9	40.7
6	Delhi	51.2	36.7
7	Goa	54.5	40.4
8	Gujarat	41.8	23.7
9	Haryana	34.3	25.0
10	Himachal Pradesh	48.5	41.7
11	Jammu and Kashmir	48.0	35.4
12	Jharkhand	37.2	31.0
13	Karnataka	41.8	31.7
14	Kerala	41.9	35.0
15	Madhya Pradesh	38.3	32.3
16	Maharashtra	36.0	20.3
17	Manipur	-28.5	-48.2
18	Meghalaya	33.0	18.6
19	Mizoram	-47.6	-75.6
20	Nagaland	-33.7	-48.1
21	Odisha	37.0	28.7
22	Puducherry	64.7	60.2
23	Punjab	57.7	48.8
24	Rajasthan	36.0	24.2
25	Sikkim	9.2	-20.5
26	Tamil Nadu	34.8	25.2
27	Telangana	24.7	13.8
28	Tripura	32.2	25.8
29	Uttar Pradesh	32.3	23.1
30	Uttarakhand	52.4	43.4
31	West Bengal	33.9	27.0
	All India Average Shortfall	37.9	27.2

Figure2: Revenue Gap comparison- April 2021 to March 2022 YoY



Trends in Return filing

5. The table 5 shows the trend in return filing in FORM GSTR-3B and GSTR-1 till due date for return period Nov'21 to Apr'22. Tables 6 and 7 show the State wise filing for these months.

Table 5: Return filing (GSTR-3B/GSTR-1) till due date

Return Period	GSTR-3B (%)	GSTR-1(%)
Nov'21	74.31	76.23
Dec'21	76.79	53.51
Jan'22	74.09	57.31
Feb'22	73.90	78.38
Mar'22	73.08	52.72
Apr'22	78.55	55.14

Figure 3: GSTR-3B/GSTR-1 Filing till due date

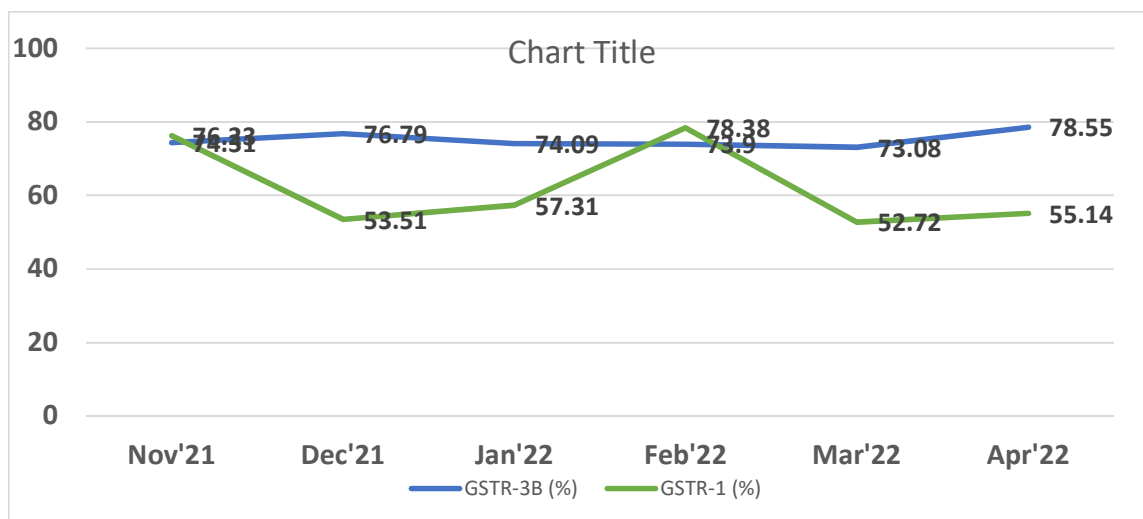


Table 6: State-wise Return filing (GSTR-3B) till due date (Nov'21-Apr'22)

STATE CD	STATE	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22
01	Jammu and Kashmir	78.87%	81.60%	79.71%	80.06%	75.42%	81.86%
02	Himachal Pradesh	75.78%	80.42%	75.96%	76.61%	75.34%	80.57%
03	Punjab	78.13%	81.09%	77.35%	77.80%	77.30%	82.37%
04	Chandigarh	81.62%	82.52%	81.97%	81.51%	79.63%	85.04%
05	Uttarakhand	71.27%	75.87%	71.71%	70.05%	71.71%	76.35%
06	Haryana	73.43%	77.78%	74.65%	74.27%	74.95%	79.51%
07	Delhi	76.44%	80.29%	76.39%	76.12%	77.69%	80.97%
08	Rajasthan	75.50%	78.26%	75.19%	75.46%	72.96%	79.91%
09	Uttar Pradesh	78.13%	78.93%	77.07%	73.29%	74.33%	80.97%
10	Bihar	69.00%	72.90%	68.42%	65.73%	65.75%	69.04%
11	Sikkim	60.50%	67.78%	59.12%	59.34%	64.38%	63.37%
12	Arunachal Pradesh	49.36%	53.20%	50.29%	50.06%	46.26%	49.71%
13	Nagaland	63.39%	64.72%	63.23%	64.47%	59.37%	65.77%
14	Manipur	46.95%	55.16%	48.79%	49.02%	50.06%	54.83%
15	Mizoram	61.49%	63.48%	61.61%	60.77%	62.65%	63.12%
16	Tripura	72.80%	76.02%	74.11%	73.92%	69.35%	75.15%
17	Meghalaya	58.99%	65.96%	57.07%	57.27%	63.46%	59.81%
18	Assam	64.26%	67.50%	64.69%	62.64%	58.79%	67.68%
19	West Bengal	73.20%	79.65%	76.20%	75.52%	76.47%	80.87%
20	Jharkhand	74.60%	77.60%	74.83%	70.88%	71.15%	77.68%
21	Odisha	70.91%	74.34%	70.29%	69.45%	68.82%	74.68%
22	Chhattisgarh	63.25%	69.40%	64.58%	62.58%	59.25%	68.27%
23	Madhya Pradesh	74.33%	77.87%	74.50%	73.05%	68.10%	78.24%
24	Gujarat	81.80%	82.52%	82.51%	82.84%	81.55%	86.85%
25	Daman and Diu	-	-	-	-	-	-
26	Dadra and Nagar Haveli	72.12%	74.14%	73.49%	74.27%	73.21%	78.93%
27	Maharashtra	70.63%	74.71%	70.31%	71.28%	71.01%	75.49%
29	Karnataka	75.89%	76.54%	75.00%	75.46%	73.63%	78.36%
30	Goa	58.19%	64.34%	57.82%	57.65%	61.06%	61.74%
31	Lakshadweep	65.88%	71.56%	63.79%	73.84%	64.91%	68.54%
32	Kerala	73.98%	75.54%	74.55%	74.47%	70.69%	76.85%
33	Tamil Nadu	77.41%	76.30%	75.76%	78.15%	76.37%	82.67%
34	Puducherry	73.37%	72.32%	73.82%	74.74%	72.43%	78.70%
35	Andaman and Nicobar Islands	58.34%	60.08%	62.50%	61.87%	58.23%	64.93%
36	Telangana	64.36%	66.33%	64.02%	64.82%	64.35%	69.72%
37	Andhra Pradesh	71.91%	70.70%	70.67%	72.80%	67.91%	75.86%
38	Ladakh	62.49%	70.07%	65.27%	65.68%	70.57%	68.09%
97	Other Territory	75.31%	70.93%	72.84%	72.84%	69.66%	75.61%
Total		74.31%	76.79%	74.09%	73.90%	73.08%	78.55%

Table 7: State-wise Return filing (GSTR-1) till due date (Nov'21-Apr'22)

STATE CD	STATE	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22
01	Jammu and Kashmir	70.00%	39.52%	44.65%	74.09%	36.18%	37.31%
02	Himachal Pradesh	79.92%	48.97%	57.91%	82.51%	46.64%	55.57%
03	Punjab	83.38%	65.31%	73.14%	84.62%	67.93%	72.45%
04	Chandigarh	87.29%	69.91%	76.84%	88.85%	70.62%	74.55%
05	Uttarakhand	72.66%	47.60%	53.35%	75.02%	46.25%	51.21%
06	Haryana	79.94%	62.90%	68.59%	82.87%	64.25%	67.56%
07	Delhi	82.92%	68.55%	70.01%	84.43%	69.26%	69.19%
08	Rajasthan	80.14%	56.70%	65.39%	83.12%	55.96%	62.21%
09	Uttar Pradesh	77.25%	47.31%	51.71%	77.00%	45.75%	48.35%
10	Bihar	61.56%	29.05%	30.82%	61.60%	26.37%	26.62%
11	Sikkim	60.47%	34.05%	38.29%	62.21%	32.05%	32.37%
12	Arunachal Pradesh	46.21%	23.27%	26.19%	48.34%	19.33%	21.05%
13	Nagaland	62.76%	30.16%	31.45%	65.50%	26.24%	28.73%
14	Manipur	42.69%	20.59%	22.19%	47.36%	20.56%	20.82%
15	Mizoram	60.10%	19.38%	20.44%	54.06%	17.97%	19.75%
16	Tripura	70.97%	47.16%	49.05%	74.82%	40.05%	41.85%
17	Meghalaya	48.75%	25.56%	26.20%	50.05%	25.73%	24.83%
18	Assam	60.27%	34.11%	36.77%	62.57%	30.74%	32.82%
19	West Bengal	72.69%	48.01%	52.13%	77.52%	48.40%	51.38%
20	Jharkhand	73.00%	43.47%	46.35%	73.97%	40.16%	43.34%
21	Odisha	66.42%	36.38%	39.24%	68.77%	33.89%	36.82%
22	Chhattisgarh	63.79%	40.46%	47.44%	67.87%	38.11%	44.26%
23	Madhya Pradesh	71.29%	41.95%	52.38%	75.85%	39.23%	48.35%
24	Gujarat	88.43%	75.91%	80.47%	91.17%	76.14%	79.40%
25	Daman and Diu	-	-	-	-	-	-
26	Dadra and Nagar Haveli	82.14%	68.55%	72.51%	85.33%	69.63%	71.96%
27	Maharashtra	74.74%	57.26%	62.10%	78.39%	57.83%	60.47%
29	Karnataka	76.81%	50.10%	55.12%	78.68%	49.95%	52.44%
30	Goa	61.59%	45.72%	46.00%	62.61%	45.40%	44.16%
31	Lakshadweep	67.65%	46.79%	51.15%	72.09%	46.05%	42.13%
32	Kerala	79.48%	57.01%	60.46%	80.26%	53.80%	55.96%
33	Tamil Nadu	80.12%	56.08%	59.13%	82.20%	54.91%	58.01%
34	Puducherry	76.25%	49.61%	52.27%	78.19%	49.32%	51.48%
35	Andaman and Nicobar Islands	63.31%	36.34%	39.62%	67.07%	36.03%	37.60%
36	Telangana	65.18%	41.88%	43.55%	67.45%	39.88%	42.52%
37	Andhra Pradesh	74.70%	47.04%	50.70%	76.81%	44.42%	48.06%
38	Ladakh	49.30%	34.74%	29.83%	54.57%	36.11%	26.98%
97	Other Territory	79.01%	70.93%	79.01%	79.01%	70.79%	74.39%
Total		76.23%	53.51%	57.31%	78.38%	52.72%	55.14%

Agenda item 9: Report of Group of Ministers on feasibility of implementation of e-way bill requirement for movement of gold and precious stones:

1. In pursuance of 37th GST Council meeting held on 20th September, 2019, a GoM was constituted by the GST Council Secretariat vide O.M. dated 22.11.2019 with a mandate to examine the feasibility of implementation of e-way bill requirement for movement of gold and precious stones or otherwise and to suggest alternative ways and mechanisms for controlling tax evasion.
2. In the 2nd meeting of GoM held on 14.08.2020, it was decided to constitute a Committee of Officers (CoO) to examine the feasibility of system proposed by Kerala and all other possible solutions to plug the gap in the system.

3. Recommendations of the Committee of Officers (CoO):

The Committee of Officers submitted their recommendations to the GoM on 30.07.2021 (attached at Annexure-D to the GoM report).

4. Recommendations of the GoM:

After detailed discussions and deliberations, the Group of Ministers made the following recommendations to the GST Council:-

(A) E-way bill for intra-state movement of gold and precious stone:

- (i) The states should be allowed to decide about imposition of the requirement of e-way bill for intra-state movement of gold and precious stones within their states.
- (ii) There will be a minimum threshold of Rs.2 Lakh, and the states can decide any amount including or above this amount as minimum threshold for generations of e-way bill for intra-state movement of gold/precious stones in their state.
- (iii) Only part 'A' on the e-way bill will be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill.
- (iv) Further, modalities of generation of e-way bill for intra-state movement of gold/precious stones will be as suggested by NIC/GSTN.
- (v) For deciding about implementation of such a system of e-way bill for intra-state movement of gold and precious stones within the state, as well as regarding the threshold value to be adopted for generation of such e-way bill within the state, the procedure of consultations with the jurisdictional Principal Chief Commissioner/Chief Commissioner of Central Tax, or any Commissioner authorized by him, should be followed by the States.
- (vi) Once e-way bill requirement for movement of gold and precious stones is decided, the corresponding suitable amendment in CGST Rules, 2017 would have to be carried out. While finalizing amendment in Rules, it is to be ensured that in case of supply of gold by registered persons to unregistered buyers, the requirement of e-way bill generation is mandated on registered supplier only.

(B) E-invoicing for gold and precious stones:

- (i) E-invoicing should be made mandatory for B2B transactions by all taxpayers supplying gold/precious stones (goods of HSN 71) and having annual aggregate turnover above Rs.20 Crore.
- (ii) GSTN, in consultation with NIC, to work out the modalities and timelines for implementation of the proposed requirement of e-invoicing of the proposed requirement of e-invoicing for gold/precious stones.

(C) Levy of GST on RCM basis on old Gold:

The issue of levy on GST on reverse charge mechanism (RCM) basis on purchase of old gold by registered dealers/jewellers from unregistered persons may be referred to Fitment Committee for detailed examinations.

5. The complete report of the GoM along with Annexure A, B, C and D is placed herewith.

Report of the Group of Ministers

**F. No. CBEC- 20/13/02/2020-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board Indirect Taxes & Customs,
GST Policy Wing

Room No. 159-A, North Block,
New Delhi, January, 2022

OFFICE MEMORANDUM

Subject: Final Report of the Group of Ministers to examine the feasibility of implementation of E-way bill requirement for movement of gold and precious stones- reg.

In pursuance of the decision taken in 37th GST Council Meeting held on 20th September, 2019, a Group of Ministers (GoM) was constituted by the GST Council Secretariat vide O.M issued vide F.No. 591/GoM/Mvmt of Gold & Pre. Stones /GSTC/ 2019/9221-9225 dated 22.11.2019 with a mandate to examine the feasibility of implementation of e-way bill requirement for movement of Gold and other precious stones.

2. The Group of Ministers held three meetings. Based on discussions in these meetings, the report of the GoM has been finalized. The final report of the GoM, duly approved by the Convenor Shri K N Balagopal, Hon'ble Finance Minister of Kerala, is enclosed herewith for necessary action at your end.

Sanjay Mangal
27/1/22

Sanjay Mangal
Pr. Commissioner (GST)
Email: sanjay.mangal@nic.in

To,
The Joint Secretary,
GST Council Secretariat.
Tower-II, 5th Floor,
Jeevan Bharti Building
Connaught Place,
New Delhi-110001

Encl: As above

Report of the Group of Ministers (GoM) to examine the feasibility of implementation of e-way bill requirement for movement of Gold and other precious stones

In pursuance to the decision taken in 37 GST Council Meeting held on 20th September, 2019, a Group of Ministers (GoM) was constituted by the GST Council Secretariat vide O.M. issued vide F.No.591/GoM/Mvmt of Gold & Pre.Stones/GSTC/2019/9221-9225 dated 22.11.2019 with a mandate to examine the feasibility of implementation of e-way bill requirement for movement of Gold and other precious stones.

2. The GoM held three meetings on 18.01.2020, 14.08.2020 and 16.11.2021 respectively. The minutes of these three meetings are enclosed as Annexure A, Annexure B and Annexure C respectively.

3. The GoM examined the data on revenue collection, import, export, consumption, price trends and estimate of smuggling of gold from various sources. The issue of decline in the revenue collection from gold, with simultaneous sharp surge in smuggling of gold, was highlighted by Kerala. GoM deliberated on various measures for prevention of any revenue loss on account of evasion of tax on gold and precious stones, including requirement of generation of e-way bill for intra-state movement of gold and precious stones, as suggested by Kerala, concerns of various State Governments regarding security of gold/precious stones as well as of the persons carrying such consignments in case of implementation of e-way bill system were also discussed. In order to maintain the safety of gold/carriers during movement, various measures like encrypted e-way bill, restriction on availability of e-way bill data with only senior officers of level not less than the rank of Commissioner and not capturing details of transport vehicles, etc. were also discussed. GoM also deliberated on other possible measures to plug in revenue leakage including e-invoicing and levy of GST under reverse charge mechanism on purchase of old gold by registered persons from unregistered suppliers.

3.1 In the 2nd Meeting held on 14.08.2020, GoM decided to constitute a Committee of Officers (CoO) comprising of members from the GoM, GSTN, NIC and GSTC Secretariat, to examine the feasibility of the system proposed by Kerala and all other possible solutions to plug in revenue gaps.

4. The Committee of Officers (CoO) submitted its report to GoM on 30.07.2021 along with its recommendations. The copy of the Report submitted by CoO is enclosed at Annexure D.

5. After detailed discussions and deliberations, the Group of Ministers makes the following recommendations to the GST Council:

(A) E-way bill for intra-state movement of gold and precious stone :

- (i) The states should be allowed to decide about imposition of the requirement of e-way bill for intra-state movement of gold and precious stones within their states.**
- (ii) There will be a minimum threshold of Rs.2 Lakh, and the states can decide any amount including or above this amount as minimum threshold for generations of e-way bill for intra-state movement of gold/precious stones in their state.**

- (iii) Only part 'A' on the e-way bill will be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill.
- (iv) Further, modalities of generation of e-way bill for intra-state movement of gold/precious stones will be as suggested by NIC/GSTN.
- (v) For deciding about implementation of such a system of e-way bill for intra-state movement of gold and precious stones within the state, as well as regarding the threshold value to be adopted for generation of such e-way bill within the state, the procedure of consultations with the jurisdictional Principal Chief Commissioner/Chief Commissioner of Central Tax, or any Commissioner authorized by him, should be followed by the States.
- (vi) Once e-way bill requirement for movement of gold and precious stones is decided, the corresponding suitable amendment in CGST Rules, 2017 would have to be carried out. While finalizing amendment in Rules, it is to be ensured that in case of supply of gold by registered persons to unregistered buyers, the requirement of e-way bill generation is mandated on registered supplier only.

(B) E-invoicing for gold and precious stones:

- (i) E-invoicing should be made mandatory for B2B transactions by all taxpayers supplying gold/precious stones (goods of HSN 71) and having annual aggregate turnover above Rs.20 Crore.
- (ii) GSTN, in consultation with NIC, to work out the modalities and timelines for implementation of the proposed requirement of e-invoicing of the proposed requirement of e-invoicing for gold/precious stones.

(C) Levy of GST on RCM basis on old Gold:

The issue of levy on GST on reverse charge mechanism (RCM) basis on purchase of old gold by registered dealers/jewellers from unregistered persons may be referred to Fitment Committee for detailed examinations.

F.No. CBEC-20/13/02/2020- GST | 710
Ministry of Finance | 3/3/2020
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

Room No. – 159-A
Dated 03rd March, 2020

OFFICE MEMORANDUM

Subject: Minutes of first meeting held on 18.01.2020 of Group of Ministers to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones – reg.

This is in reference to the first meeting held on 18.01.2020 of Group of Ministers to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones. The minutes of the said meeting duly approved by the Convenor Dr T M Thomas Isaac, Hon'ble Finance Minister, Kerala are enclosed.


(Yogendra Garg)
Principal Commissioner (GST)
Email: y.garg@nic.in

To,

The Commissioner, Commercial Tax of the States of Bihar, Gujarat, Karnataka, Kerala, Punjab, West Bengal with request to brief the Hon'ble Ministers about the minutes of the Meeting as above.

Copy To (for necessary information),

1. OSD to Revenue Secretary, Government of India
2. OSD to Chairman, CBIC
3. Special Secretary, GST Council Secretariat

Encl: As Above

Minutes of the meeting of the Group of Ministers to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones, held in Kalpvriksha, North Block, New Delhi on 18th, January, 2020.

- 1.1 First meeting of the Group of Minister (GoM) to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones and to address issues and concerns arising out of it, convened by Dr. Thomas Isaac, Hon'ble Finance Minister, Kerala was held in Kalpvriksha, North Block, New Delhi on 18th January, 2020. The list of the attendees is enclosed as **Annexure — I**.
- 1.2 The meeting started with presentation by Shri Sanjay Mangal, Commissioner, GST Policy Wing, CBIC. In the presentation, he provided a brief overview of the deliberations on this issue in various meetings of the GST Council and Law Committee. The copy of presentation is enclosed as **Annexure - II**.
- 1.3 Hon'ble Finance Minister, Kerala Dr. Thomas Isaac briefed about the serious concerns of State of Kerala about the tax evasion and loss of revenue from gold. He stated that during the VAT regime in Kerala, major gold dealers had opted for compounding scheme and the tax was fixed based on their previous year's turnover. There was no input tax credit for compounded dealers and this ensured higher revenue from the Gold sector in VAT regime. Hon'ble Finance Minister, Kerala further informed that the rate of tax on gold in VAT was 5% whereas the rate of GST for Gold was reduced to 3% and in effect, the State share became 1.5% that too with input tax credit. He added that however there is a misconception that the reason of reduction in revenue from gold in GST is due to decrease in rate of duty in GST. He mentioned that the calculated effective rate on gold in VAT regime due to compounding effect was 1.25%. Hence, effectively the rate of tax has increased from 1.25% in VAT regime to 1.5% in GST regime. Hon'ble Finance Minister, Kerala stated that under GST, the gold sector is not showing declared growth in the State and that while considering the increase in price of gold and also the demand of gold in the State, there should have been a growth in the sector, the gold sector is showing a declining trend. He further stated that the channels for unaccounted inward supply of gold are rampant and it had squarely reflected in unaccounted sale and consequent tax loss from this sector. Kerala, in the VAT regime, collected revenue equal to Rs. 650 to 700 crores per annum whereas in the GST regime, this amount has declined to approximately Rs. 300 crores i.e. Rs. 150 crore each as CGST and Kerala GST. He further emphasized that during the initial deliberation on GST, the then Chief Economic Advisor had recommended tax rate on gold as 5% in order to have a revenue neutral rate and to collect revenue equal to Rs. 20,000 crore. Eventually, the rate was fixed at 3% and it was estimated that revenue equal to Rs. 10,000 crore would be collected.
- 1.4 Hon'ble Finance Minister, Kerala Dr. Thomas Isaac also stated that one reason for fall in revenue may be the fact that the major turnover is from B to B supply where input tax credit may have been utilized. There is huge ITC availment and utilization by the gold industry, resulting in less net payment of duty from gold. There is also no way to check whether input tax credit availed is correct or not, as since there is no way to track such supplies and its movement and therefore possibility of huge tax evasion cannot be ruled out. Further, there

may be possibility of manipulation of software for issuance of invoices by taxpayers in order to evade the tax. He mentioned that the only way for tracking movement of gold is through system of e-way bills. He referred to the concerns of West Bengal and Gujarat regarding security of gold in e-way bill system and stated that some mechanism may be developed to keep the secrecy of the movement of gold in the e-way bill system. He suggested that encrypted e-way bills may increase secrecy and thus enhance security. He also suggested that to reduce inconvenience to customers/ taxpayers, the minimum amount for issuance of e-way bill can be enhanced for gold. States may also exempt e-way bill for intra-state movement of gold. Hon'ble Finance Minister, Kerala finally mentioned that to take a comprehensive view in the matter, data on revenue collected on gold and other precious metals in pre-GST period (VAT and Central Excise) and post GST period need to be made available. A note sent on the matter by Kerala for discussion in the meeting is enclosed as **Annexure — III**.

- 2.1 Shri Sushil Modi, Deputy Chief Minister, Bihar and Shri Manpreet Singh Badal, Finance Minister, Punjab also emphasized the need for relevant data.
- 2.2 Shri Ritvik Pandey, joint Secretary (Revenue) mentioned that making e-way bill compulsory for gold and other precious stones may not resolve the issue. He informed that the core of e-way bill system is the tagging of the details of the vehicle with the invoice. Therefore, during physical verification, actual vehicle number along with documents carried is verified vis-a-vis the corresponding details in the e-way bill. In case of gold etc., the movement is not done by conventional transport methods, and the gold is mainly carried on person by carriers or customers who travel mostly on railway or passenger bus and hence, during generation of e-way bill, the consignor may not know about the exact vehicle number. Hence, implementation of physical verification of such e-way bill may cause inconvenience to the passengers of whole bus and if no discrepancy is found during such verification, in such cases, public may take serious offence. Further, if an unregistered person causes the movement of goods, e-way bill is not required. Hence, a person may move gold in guise of sale to unregistered person to evade the tax. He further informed that Karnataka had e-way bill for movement of gold, but majorly interception was done on the basis of information only.
- 2.3 Shri Arun Kumar Mishra, Additional Secretary, Commercial Tax, Bihar informed that in the present system, there is no systematic record of supply of gold and a system of maintenance of record for issuance of invoices/ challans may be explored.
- 2.4 Shri J P Gupta, Chief Commissioner, Commercial Tax, Gujarat emphasized that the entire chain has to be mapped in order to have any effective mechanism to track the movement and supply. Since, huge amount of gold is imported, it is imperative to have comprehensive data on the sector. He further stated that e-way bill mechanism may not be a practical mechanism as actual movement in case of inter-state supply is not monitorable. He said that any information on movement of gold or precious metal / stone may pose serious security risk, and therefore, state is not in favour of such a mechanism, and alternative mechanism may be considered. He further emphasized that the parameters such as incidence of taxation, volatility in price and consumption etc. also need to be considered.

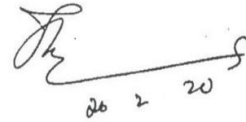
- 2.5 Shri Amitabh Kumar, joint Secretary, GST Council Secretariat stated that emphasis may also be given on non-intrusive methods for tracking the transactions such as data from the nominated agencies/banks for import of gold.
- 2.6 Further, Shri Sushil Modi, Deputy Chief Minister, Bihar emphasized the need to understand the entire mechanism of the sector, including import of gold by nominated agencies and banks and also sale of gold by such nominated agencies/ banks.
- 2.7 Shri V K Garg, Advisor, Punjab informed that the sector gets further complicated by issue of sovereign gold bonds by Government. He further stated that E-way bill is not required in case movement is caused by an unregistered person, hence, the same may not be an appropriate method for tracking. He mentioned that instead, usage of e-invoicing may be explored for gold. He also informed that Income tax have sector wise data and information may be sought from them as well.

Commissioner, Commercial Tax, Kerala stated that there is no provision to maintain specific record for gold in the current system. He also informed that currently there is no reverse charge on old gold by jewellers which legalizes stocks with dubious origins. The Jewellers get the supply of gold from wholesalers (who in return get gold from bullion traders as well as smuggling), auction of mortgaged gold by banks, purchase of old gold and direct supply of smuggled gold. He then supplies it to job worker and hallmarking centre for value addition and subsequent sale. Presently there is no reference/verification point for these transactions other than those declared by buyer and sellers in their returns. This facilitates bogus transactions and credits. E-way bill may add an additional point for verification with particular reference to quantity and value. In the VAT regime, there used to be concept of presumptive tax. But there is no such system in the current tax regime.

- 2.8 In the VAT regime, there used to be concept of presumptive tax. But there is no such system in the current tax regime. Besides, there is no prescribed record for source of gold for jewellers.
- 3.1 Dr. Thomas Isaac informed that since the ministers from Karnataka, Gujarat and West Bengal are not present, decision cannot be taken. He, however, mentioned that for further deliberations, the following data/information should be made available:
 - i. pre-GST VAT and Central Excise and post-GST revenue on gold
 - ii. Actual collection of revenue from gold in GST vis-a-vis the estimates made by RNR Committee at the time of introduction of GST
 - iii. Figures of import and export of gold for past two years
 - iv. Estimates of consumption of gold to know what percentage of that consumption comes as revenue.
 - v. Price trend of gold
 - vi. Estimated income tax collected from gold/jewellery
 - vii. Estimates of smuggling of gold
- 3.2 Hon'ble Finance Minister, Kerala mentioned that after collation of data, reasonable analysis can be made for deliberations in the matter. If the data suggests that there is serious loss of revenue, then, the mechanisms made in GST may not be sufficient for gold and we may to think of

alternate options. He emphasized that revenue leakage cannot be allowed and if e-way bills are not found feasible, then some other method has to be explored.

4. In the end, it was decided that data/ information mentioned in Para 3.1 above may be made available in the next meeting. Kerala also offered to present a formal note in the matter. Further, nominated agencies importing gold like MMTC, and the officers of DIU may be called in the next meeting to have a holistic understanding of the sector. The decision in the matter will be taken after deliberations based on the data/ information made available.

A handwritten signature in cursive script, followed by a horizontal line. Below the line, the date "26 2 20" is written.

Annexure – I

List of Attendees

1. Dr. T M Thomas Isaac, Minister for Finance, Kerala
2. Shri Sushil Kumar Modi, Deputy Chief Minister, Bihar
3. Shri Manpreet Singh Badal, Minister for Finance, Punjab
4. Shri V K Garg, Adviser to Chief Minister, Punjab
5. Shri Sanjay Mangal, Commissioner, GST Policy wing, CBIC
6. Shri J P Gupta, Commissioner, SGST, Gujarat (Through VC)
7. Shri Amitabh Kumar, Joint Secretary, GST Council Secretariat
8. Shri Dheeraj Rastogi, Joint Secretary, GST Council Secretariat
9. Shri Ritvik Pandey, Joint Secretary, Department of Revenue
10. Shri Anand Singh, Commissioner, SGST, Kerala
11. Shri A K Mishra, Additional Secretary, Bihar
12. Shri Rajeev Agarwal, EVP, GSTN
13. Ms. Nisha Gupta, joint Commissioner, GST Policy Wing, CBIC
14. Shri Mahesh S, Under Secretary, GST Council Secretariat
15. Shri Kumar Asim Anand, Deputy Commissioner, GST Policy Wing, CBIC
16. Shri Riddhesh Raval, Deputy Commissioner, SGST, Gujarat (Through VC)

ANNEXURE II



1st Meeting of GoM to examine the exemption from e -way Bill for the movement of gold/precious metals and stones 18.01.2020



E-way Bill for movement of Gold/Precious Metal

- Movement of gold/ precious metals and stones has been exempted from e-way bill vide rule 138(14)(a) of CGST Rule, 2017.
- During 25th meeting of GST Council held on 18.01.2018, Kerala requested to examine the feasibility of e-way bill requirement for movement of gold/ precious metals and stones, etc.
- Issue was referred to the Law Committee .

Deliberation by Law Committee on 01.06.2019

- Law Committee deliberated the issue in the meeting held on 01.06.2019.
- Law Committee was of the view that in view of security concerns, the e-way bill may not be insisted upon.
- Law Committee recommended for exploring the possibility of generating encrypted e-way bill.

Further Development:

- Decision of Law Committee was placed before GST Council in its 35th meeting held on 21st June, 2019.
- The Council directed Law Committee to re-examine introduction of e-way bill system for movement of gold and to take views of the State of Kerala on the same.
- Law Committee held meeting on 29th July, 2019 wherein, officer from Kerala was also present. The Law Committee proposed two alternatives.

First alternative suggested by Law Committee:

- E-way bill may be implemented for movement of gold and precious metals and hence, serial numbers 4, 5 and 8 of Annexure to rule 138(14) may be omitted.
- To avoid compliance complications, the value in case of such items may be raised.



Second alternative suggested by Law Committee:

- These items may be exempted from the requirement of e-way bills due to following reasons:
 - ❖ These goods are transported personally through a system of trusted couriers, e.g. angadias, who are not aware of the contents and the value of the consignment.
 - ❖ Requirement of e-way bills for movement for job-works will increase the compliance burden.
 - ❖ Post-interception action required in case of a consignment not carrying e-ways bills would also entail further complications in terms of the impoundment/storage of the detained consignment.

Further Development:

- GST Council in its 37th meeting held on 20th September, 2019 at Goa recommended constitution of a GoM.
- to suggest mechanism for controlling tax evasion without compromising on security aspect that arises from implementation of e-way bill requirement for movement of gold & precious stones.



ANNEXURE III

Discussion note on E-way bill for gold:

Background of Industry

India's Gold industry is one of the largest in the world with 29% contribution to the Global Jewellery consumption. Gold is an integral part of religious marriages in India and is considered as a family heirloom. In 2007, the demand of gold totalled 796.1 tonnes. It had peaked at 1022.3 tonnes in the year 2010, reduced slightly in subsequent years and reached 975 tonnes in 2013. At the same time, the gold price almost trebled from Rs.9,223/- to Rs.26,440/- in 2013.

During the VAT regime in Kerala, major gold dealers had opted for compounding scheme and the tax was fixed based on previous year's turnover. There was no input tax credit for compounded dealers and this also had contributed for higher revenue from the Gold Sector. The effective rate of tax was 5% and this rate ensured good revenue from this sector. However, when the GST was introduced, the rate of GST for Gold reduced to 3% and in effect the state's share became 1.5% that too with input tax credit. This fall from 5% to 1.5% is the major reason for fall in revenue from the Gold sector.

Under GST, the gold sector is not showing declared growth in the State. Considering the increase in price of gold and also the demand of gold in the State, there should have been a growth in the sector. But the gold sector is showing a declining trend. The channels for unaccounted inward supply of gold are rampant and it had squarely reflected in unaccounted sale and consequent tax loss from this sector.

EVASION

From 2014 onwards up to the year 2019, gold attracted an import duty of 10%. By the increase of import duty to 12.5%, the tax incidence on the gold reached up to 15.75% including GST. It had thus become more attractive for the smugglers and jewellers in their adventure. The following table shows the tax arbitrage between the legal and illegal suppliers:

Particulars	Accounted dealers	Unaccounted dealers
Gold rate per sovereign	Rs.26,824/-	Rs.26,824/-
Add: Import Duty per sovereign (12.53%)	Rs.3,361 /-	
Add: Bank Premium per sovereign (16\$)	Rs.1,128/-	-
Add: GST per sovereign @ 3%	Rs.940/-	
Add: Income Tax per sovereign (33.8% of Net Profit assuming 3% Net Profit)	Rs.314/-	-
Total Cost per Sovereign	Rs.32,567/-	Rs.26,824/-
Difference (Additional Margin to unaccounted dealers)		Rs.5,743/- per sovereign

As such the difference of 21% will give higher dominance to smugglers and dealers who get a very good profit. In lure of big profits through the tax avoidance, smugglers have come up with numerous innovative ways to transport gold clandestinely into the State.

The World Gold Council and the other industry bodies have said that up to 95 tonnes of gold was smuggled into India in 2018, although India's Association of Gold Refineries and Mints and other industry bodies put the figure at more than twice that. World Gold Council expects around 200 tonnes of gold to be smuggled into India this year.

According to reports, in 2018/19 fiscal year that ended on March 31, customs officials seized 4,058 kg (4 tonnes) of gold, up from seizures of 3,223.3 kg a year ago these are information based/chance detections.

Considerable quantity of smuggled gold goes into grey market. Grey market operators usually sell gold at discounts to prevailing market prices, thus reducing compliance and increasing evasion.

There were instances when the smugglers had used the facility of Special Economic Zones. The Directorate of Revenue Intelligence in a case at Hyderabad, had found that the gold that was to have been exported by making it into jewellery was diverted into the local market and sold for higher profits. As there is no export tax on the jewellery made at the SEZ unit, they do not pay tax on the import also, which helped them gain substantial profit out of tax evasion. The SEZ unit was found to have started only to misuse the SEZ status for the purpose of making such illegal profits.

The smugglers usually source gold from various cities of neighbouring States and it is smuggled to Thrissur which is the hub of gold business in Kerala, through the land route as the city does not have any connectivity by either air or sea. Recently the customs officials in Kerala seized roughly 123 kg of smuggled gold valued at around Rs 50 crore during raids at 23 premises in the Thrissur district. If the carriers are bringing the yellow metal in their cars, it is quite difficult to track it unless there is an informer.

In the last week, the Central GST intelligence unit in Kozhikode arrested the owner of wholesale jewellery in connection with an alleged tax evasion to the tune of Rs 25 crore. The detection of such a huge tax evasion from a single case itself is an indicator to a large scale illicit transactions in the gold sector. Smuggled inflows of gold are expected to jump from 30% to 40% this fiscal to about 140 tons and may further escalate in 2020.

Gold dealers are not keeping data server in their own premises. During inspections, it is very difficult to identify the server. Usually, the servers are kept in a remote place far away from the business place. There are instances of keeping the data in cloud servers procured on lease rent. Many such servers are placed in transnational destinations and it is quite difficult to know actually where the server is kept. The dealer / administrator only has the privileged access to these servers by unique user id and password. As and when the enforcement team surprises the business premises, the dealer terminates the connection with these servers and even after the user id and password are supplied, the data retrieval from server may not be possible.

Some of the Gold dealers erase data very frequently, may be on a daily basis. They report data to the owners or management and erase it from the business place. Enforcement agencies that enter into the business place will be able to recover data only for a short period.

In many cases dubious billing software is used by the gold dealers. It is cleverly designed to suppress a major portion of turnover. These are customized software and it is difficult to identify it.

Many dealers keep data in temporary storage devices like pen drive or external hard disc. They can hide such devices easily and also; they don't want to keep data relating to the past transactions. They transfer data on a regular basis to some other systems kept somewhere else than the business place.

The proposed e-invoice system is a good move, which helps to generate invoice from the common portal. It should be made compulsory for B2B as well as B2C transactions in jewellery sector. It will help to curb the actions of unscrupulous taxpayers as the tax authorities will have access to data in real-time.

A case for e-way bill

Stock transfer between the members of the group of major players in gold is a new tactics noticed in gold Sector and these types of transactions was not so prevalent in VAT regime. This was particular because under the VAT Act, there were statutory requirement of transporting documents i.e., e-declaration and supporting statutory forms.' The burden of proving the transport was hence upon the dealer. But under the GST regime, the transporting document such as e-way bill is not made mandatory and resultantly, it has come to notice that when there is huge stock transfer of gold reported to the branches outside the State, they are also reporting inward stock transfer of the same commodity from the outside branches. This modus operandi is adopted in this sector, with an intention to report lesser sales turnover. This model of stock transfer reporting helps the dealers circulate credit among them as and when required. In order to retain overdraft facility and for getting advances from Commercial Banks it is necessary that they are not categorized under Non-Performing Asset (NPA). For this purpose, the dealers in this sector will have to maintain a fixed stock of gold. Hence the dealers had adopted the tactics of stock transfer of a portion of gold sold as stock transfer to their sister concerns. Even though such inter-state stock transfer attracts tax liability, it can be set off against ITC credit and such quantity can be circulated through books. These transactions are suspected to be only a paper transaction without any physical movement of goods.

With the present Act and Rules, there is no reverse charge on Old Gold purchased by Registered Dealers and the uploaded invoices for B2B transactions either sale or stock transfer does not show the quantity. As such the valuation remains un-verified. Year-end audit may also not reveal any irregularities. Inspections to verify the stock is also not practical. If e-way bill is introduced there is always a duty to declare before transport and the same cannot be replaced or altered. So, e-way bill is expected to increase tax from the sector by providing additional data points for verification.

In VAT, Kerala had electronic declarations for Interstate movements of goods above Rs. 5,000/- and Karnataka had declarations for movement of goods above 20,000/-. This included Gold also. So, at least for some states they are not imposing any additional compliance burden. These types of measures are to be introduced in the GST system to check the clandestine movement of gold. But the GST Council had decided not to include gold in the E way bill provisions. This is found to be a major setback in preventing the tax evasion rampant in the Gold sector.

Now the transport of precious cargo is moving towards the formalised sector. They provide security with vehicles, Vaults Insurance etc. This movement will be more complaint in terms of documentation. Secrecy of the transport is not compromised by the introduction of e-way bill. Even now for stock transfer and job work the consignee has to issue invoice/ Delivery Challan in physical

form and the same shall bear the name and the address of the consigner and the consignee and the quantity. The difference of introduction of e way bill is only that the same would need to be electronically declared with the Tax Department. Such e-way bills can be encrypted and transporter can need to only carry the number of the e way bill. If intercepted by the Officers, the verification part can be authorized to select officers in the state. So, if e-way bill is introduced the secrecy of the transport would be intact, with the transporter not knowing the contents and value of the consignment if the consignee/consigner desires so.

The GSTN has deployed state of the art security measures to secure the data captured by them and is in no way prone to any hacking threats. Hence there are no security issues or any such other issues that would prevent the dealers from raising the e-way bill. The option of keeping the data captured in the e-way bill portal to the exclusion of all others till the transaction is completed or intercepted by a proper officer may be deployed so as to address the security concerns. Proper accountability of movement of gold towards inward supply or stock transfer can be ensured only if the e-way bill system is made mandatory. At present, dealers are not accounting any such transactions as there are no documents to be raised such as e-way bill.

Suggestions

Considering the issue of small Karigers/Angadias, a higher threshold can be prescribed for e-way bill for job work.

Exemption for Intra state movement can be left to the States concerned.

The threshold for e-way bill on Gold and other precious articles can be decided higher than the present 50,000/-Rupees limit.

Minutes of the 2nd Meeting of Group of Ministers

to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones held on 14th August, 2020

The second meeting of the Group of Ministers (GoM) to discuss feasibility of implementation of e-way bill for the movement of gold and precious stones was convened on 14th August, 2020 under the chairmanship of Dr. T.M. Thomas Isaac, Hon'ble Finance Minister of Kerala. The said meeting was conducted through video conferencing and the list of the attendees is enclosed as **Annexure – I**.

2. At the outset, chairman of the GoM, Dr.T M Thomas Isaac welcomed all the participants to the meeting and reiterated the fact that the matter has been discussed in the GST Council Meeting wherein it was recommended to constitute a GoM on the matter. GoM had held a meeting on it. He informed that Kerala has a set of new proposal as well which he would subsequently discuss in the meeting. He then requested Principal Commissioner, GST Policy Wing to make the opening presentation on the same.

3.1 Principal Commissioner, GST Policy Wing made a presentation which is enclosed as **Annexure - II**. He informed members of GoM that based on the discussion held in the last meeting on 18.01.2020, it was decided to collect data on revenue collection, import, export, consumption, price trends and estimate of smuggling of gold from various sources and alternative measures was to be considered for prevention of revenue loss based on such data. He further informed that data was collected from DG Systems, DGFT, DRI, World Gold Council, GJEPC and Dept. of Economic Affairs and was circulated to the members of GoM.

3.2 He also informed further that data on GST revenue from gold was received from GSTN. The same was based on data from FORM GSTR-3B of those taxpayers who have mentioned Chapter 71 in top five HSN in their registration form.

3.3. Members were also briefed about the note sent by Kerala. The said note is enclosed as **Annexure – III**. As per the note of Kerala, data in respect of gold was not fruitful as it cannot capture data relating to smuggled gold, old gold recycling and sale of pledged ornaments by NBFCs which forms a major part of the business. Note also pointed out the various reasons for movement of gold and highlighted that in such movements at least one registered entity is always involved. It emphasised the need of e-way bill system and recommended that vehicle details in e-way bill can be replaced with “the name and address of the person transporting the goods” and therefore issues relating to stoppage of public transport etc. can be avoided. It also recommended that all types of movement should be covered under e-invoicing system. Reverse charge mechanism for old gold in GST regime on the same model as that existed in erstwhile VAT regime was also emphasised in the note.

4.1 After the presentation, the Chairman of GoM, Dr. T M Thomas Isaac made an observation that there has been decline in the revenue collection from gold with simultaneous sharp surge in smuggling of gold. He said that the tax evasion has increased due to the fact that no documents are

required for movement of gold. There is no check on such movements. The system as of now is conducive for smuggling and we must have some system for tracking the same. Thereafter, he stated that various State Governments have raised security concerns on gold in case of implementation of e-way bill system. He suggested that in order to maintain the safety of gold during movement, encrypted e-way bill may be used whose data shall be restricted with an officer not less than the rank of Commissioner. He further suggested that reports regarding transportation of gold shall be made available after completion of movement of gold and the carrier may be allowed to carry gold without any hard copy of documents.

4.2 Deputy Chief Minister of Bihar, Shri Sushil Kumar Modi informed that the revenue for the State of Bihar from gold has increased with implementation of GST. He informed that revenue from gold in FY 16-17 was Rs. 38 crores which increased to Rs. 95 crore in FY 18-19 and 123.48 crore in FY 19-20.

4.3 Deputy Chief Minister of Gujarat, Shri Nitinbhai Patel strongly opposed the idea of e-way bill system for gold movement. He informed that both diamond and gold business has strong presence in Gujarat. He informed the GoM that international airport and MCX exchange are present in Ahmedabad and nearly 23% of the gold imported in the country is being imported through Ahmedabad. [He said that business of both viz. recycled and new gold is carried out in Gujarat. Old gold is melted and new jewellerys are made out of it. He further said that other cities where the gold primarily moves from Gujarat are Jaipur, Hyderabad and Delhi. In Gujarat, three important cities in respect of business of gold are Ahmedabad, Rajkot and Surat]. He further informed that movements of gold is done very securely, discreetly and generally in small packets as it is a high value item. He insisted that ensuring security to the businessman dealing in gold is primary responsibility of State Government, therefore, any disclosure on movement of gold is potentially risky area. At present, import has declined substantially in last two years and implementation of e-way bill system will further create more issues for them, particularly honest and law abiding tax payers. Therefore, our state is not in favour of e-way bill and an alternate way must be thought of.

4.4 Shri Sushil Kumar Modi stated that if e-way bill data is restricted with Commissioner then it cannot be checked and verified on road. The purpose of e-way bill system will be lost if it cannot be checked during movement. He further stated that e-way bill system without vehicle number for gold will complicate the matter and not resolve the issue of smuggling of gold while transportation. He emphasised the fact that for the gold that moves through legal channel, information is available about who is importer, whom is he supplying etc. On that point, Shri Nitinbhai Patel made a remark that there are approximate only twenty companies which are in this sector in the State of Gujarat. Shri Sushil Kumar Modi continued by stating that in Bihar primarily job work is carried out and a complicated supply chain is involved in such type of work. He stated that e-way bill system for gold is very impractical and an alternative method may be discussed for the same in terms of Section 68 of the CGST Act that provides for inspection of goods in movement and Section 129 that provides for detention, seizure and release of goods in transit. He further suggested that e-invoice may also be discussed as an alternate for e-way bill to prevent smuggling of gold if these Sections of Act are not effective. But, e-way bill system will make matter more complicated.

5.1 Thereafter, Chairman of the GoM, Dr.T M Thomas Isaac stated that there are many commodities wherein freedom has been given to a State for intra-state movement to decide whether e-way bills are required for movement of such commodities. So, in case of movement of gold as well, States should be allowed to decide about requirement of e-way bill system for movement within the state. He further informed that a note has already been sent suggesting amendment in CGST Rules to allow e-way bill System for movement of gold within territory of a State.

5.2 Shri Sushil Kumar Modi enquired whether the said proposal of Kerala for e-way bill system is for movement of intra-State supplies or for any supply which has movement in Kerala. Commissioner, Commercial Tax, Kerala informed that the proposed system may be for any movement of Kerala irrespective of fact that the concerned supply is inter-State or intra-State.

6.1 Principal Commissioner, GST informed members of GoM that the e-way bill system is only for motorised vehicles. On making e-way bill system mandatory for gold movement, it may happen that movement of gold may start from non-motorised vehicles such as rickshaw and even non mechanized boats. Further, the purpose of mandating an e-way bill will not be served if the vehicle number is to be substituted with individual name and ID details of the carrier and details of the same are to be made available when the movement gets completed.

6.2 He further emphasised that the main concern is the gap in reporting system. The primary area of such gap is movement of gold for the purpose of 'job work' and 'sale on approval basis'. In light of the same, alternative system of reporting for the said gap could be explored so that the accountal is complete. He suggested that one such solution may be to increase the frequency of FORM GST ITC-04 for reporting of gold sent for job work. At present, such form is to be submitted every quarter whereas Gold and other precious goods do not normally remain with the job-worker for such a long duration.

7.1 Deputy Chief Ministers of Bihar and Gujarat said that the new proposal from Kerala is welcome, and that the States may have independence in deciding the requirement of e-way bill system on certain sensitive goods. Chief Commissioner, State Tax, Gujarat stated that bigger issue in respect of tax evasion is the recycled gold and informal channel through which gold is sold. These transactions need to be brought into the tax net. Another important aspect in the sector is the value addition done during the job work. There is clear demarcation of the industry. On these lines with almost half of the sector being mechanised and other half manual. He further stated that industry needs to be engaged in the same before a viable and implementable solution is found out to prevent tax evasion.

7.2. Chairman of the GoM, Dr.T M Thomas Isaac stated that reverse charge mechanism in old gold may be considered on line with the practices in erstwhile VAT regime. He also said that the provisions of e-invoicing may also be considered for this sector. He further informed that raids were conducted on 64 shops in Kerala. But, no headway is being made in investigation as no information can be obtained from the software and servers. Officers should work out on these issues and make alternate proposal in the next meeting. He requested other states present in the meeting to make proposal.

7.3 Commissioner, Commercial Tax, Karnataka also endorsed the same view of intra-State e-way and e-invoice for gold. He further stated that evaluation may also be made on legality and technical aspect of introducing e-way bill system. Commissioner, Commercial Tax, Punjab added that States should have independence with e-way bill system and encrypted form of e-way bill may be used for intra-State supply. Principal Commissioner, GST informed that the same would need to be discussed with the officers of GSTN and NIC and other alternate options, if any, shall also be discussed to curb smuggling of gold.

8. The Chairman of GoM, Dr. T M Thomas Isaac instructed that a Committee of Officers comprising the officers from member of this GoM, GSTN, NIC and GST Council Secretariat should

examine the feasibility of system proposed by Kerala and all other possible solutions to plug the gap in the system. The Chairman also requested GST Council Secretariat for revenue collection figures during the VAT regime for the period 2016-17.

9. The GoM ended with vote of thanks from the Chairman. The date and time of next meeting shall be communicated separately.

Annexure – I

Sr. No.	Name(Smt./Shri)	Designation
1	Dr.T.M.Thomas Isaac	Minister of Finance, Kerala
2	Shri Sushil Kumar Modi	Deputy Chief Minister, Bihar
3	Shri Nitinbhai Patel	Deputy Chief Minister, Gujarat
4	Shri Yogendra Garg	Principal Commissioner, GST Policy Wing
5	Shri Sanjay Mangal	Commissioner, GST Policy Wing
6	Shri Manish Sinha	EVP,GSTN
7	Smt Ashima Bansal	Joint Secretary, GSTC Secretariat
8	Shri J P Gupta	Chief Commissioner, Commercial Tax, Gujarat
9	Shri Anand Singh	Commissioner, Commercial Tax, Kerala
10	Shri Nilkanth S Avhad	Commissioner, Commercial Tax, Punjab
11	Shri Srikar MS	Commissioner, Commercial Tax, Karnataka
12	Shri Kiran Kumar	Additional Director, DRI
13	Shri Nimba Ram	Joint Commissioner, GST Policy Wing
14	Smt Nisha Gupta	Joint Commissioner, GST Policy Wing
13	Nilesh Kumar Rai	Deputy Director, DRI
14	Shri Kumar Asim Anand	Deputy Commissioner, GST Policy Wing
15	Shri Krishna Koundinya	Under Secretary, GSTC Secretariat
16	Shri J Ravi Shankar	Director, MMTC
17		MMTC

2nd Meeting of Group of Ministers

to examine the feasibility of implementation of e-way Bill requirement exemption for movement of gold and precious stones

14.08.2020

1

Decisions in 1st Meeting held on 18.01.2020

591-GOM-MVMT OF GOLD & PRE. STONES-GSTC-2019

NATION
TAX
MARKET

- Data/ information on revenue, import, export, consumption, price trend and estimate of smuggling of gold from various sources to be collected;
- Based on the data, alternative options for preventing loss of revenue in the sector needs to be considered;
- Other agencies (MMTC and DRI) may be called in the next meeting for holistic understanding of the sector;
- State of Kerala to present a note on the matter.

2

Action taken by GST Policy Wing

- Data/ information collected from following sources: -
 - DG System, CBIC;
 - DGFT, Ministry of Commerce;
 - DRI, CBIC;
 - Dept. of Economic Affairs, Ministry of Finance;
 - World Gold Council;
 - GJEPC;
- Above data circulated to the members of GoM;
- Revenue figures on gold collected from GSTN;
- Analysis of important statistics in the following slides.

3

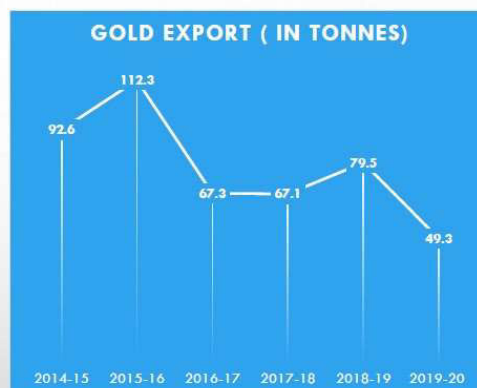
Data - Revenue (GSTN)

F.Y.	Turnover	Liability	Paid by ITC	Paid by Cash
2017-18	27,56,296	76,855	63,576	13,281
2018-19	37,10,737	1,13,176	96,967	16,209
2019-20	31,46,633	1,13,414	97,878	15,536

- Amount in Rs. crore
- Data prepared on basis of FORM GSTR-3B of those taxpayers who have been mentioned in their registration form that they deal in item under HSN Code 71 as their top five HSN . For the said taxpayers, the turnover & tax payment details have been arrived at from values reported in Tables-3.1(a), (b), (c) & (e) and Table-6 of GSTR-3B respectively.

4

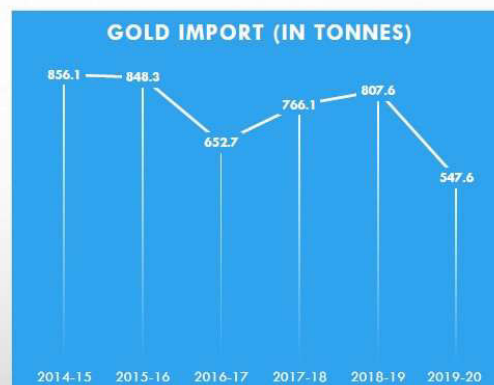
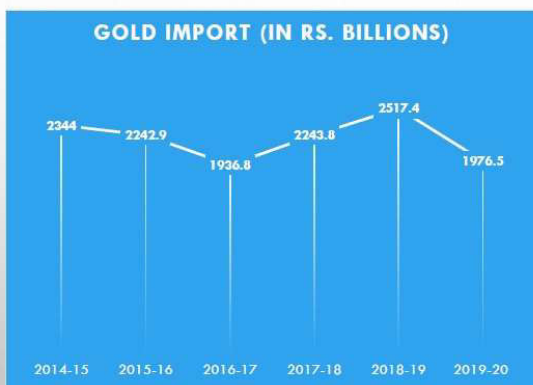
Data – World Gold Council (Export)



- Exports only includes exports of gold jewellery and gold bullion (medallion and coins) and excludes Round Tripping volumes
- FY 2019-20 – Apr, 19 to Jan, 20
- Source: Metals Focus; World Gold Council (as on 26.04.2020)

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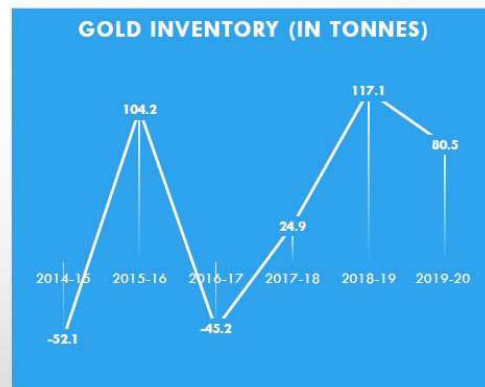
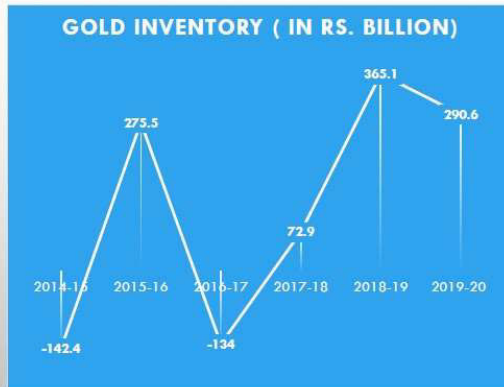
Data – World Gold Council (Import)



- Imports include gold dore' also in fine gold terms
- FY 2019-20 – Apr, 19 to Jan, 20
- Source: Metals Focus; World Gold Council (as on 26.04.2020)

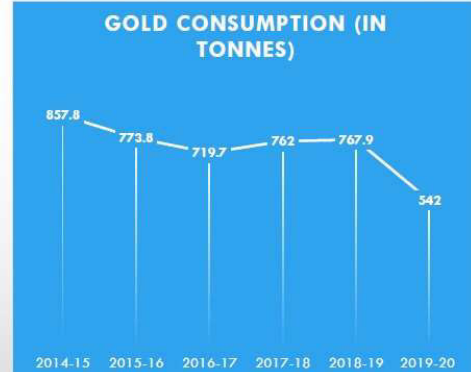
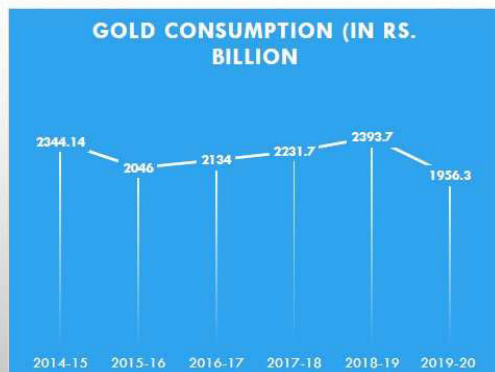
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Data – World Gold Council (Inventory)



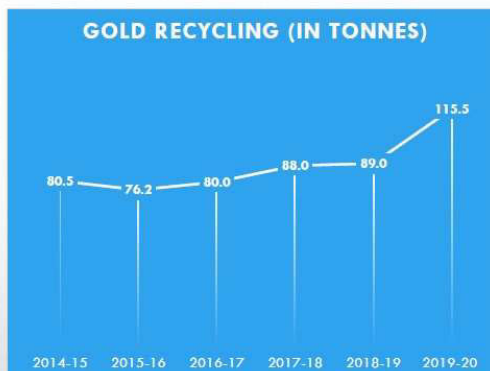
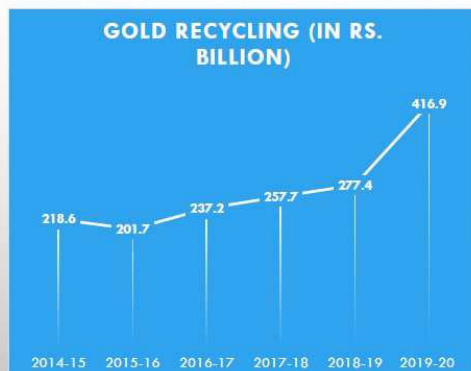
- Inventory represents bullion inventory, does not include jewellery inventory in merchandise stores
- FY 2019-20 – Apr, 19 to Jan, 20
- Source: Metals Focus; World Gold Council (as on 26.04.2020)

Data – World Gold Council (Consumption)



- Consumption includes both gold jewellery and gold investment (bar and coin) demand
- FY 2019-20 – Apr, 19 to Jan, 20
- Source: Metals Focus; World Gold Council (as on 26.04.2020)

Data – World Gold Council (Recycling)



- FY 2019-20 – Apr, 19 to Jan, 20
- Source: Metals Focus; World Gold Council (as on 26.04.2020)
- All the above data excludes : Central bank (RBI) purchases, grey market volumes, gold / jewellery purchased new by recycling old gold/jewellery; secondary sales of jewellery held as collaterals on defaulted loans

Data – Price Index of Gold



- Source:- Prices Unit, Dept. of Economic Affairs
- CPI- Consumer Price Index Combined for Gold
- WPI- Wholesale Price Index for Gold and Gold Ornaments

Data – Gold seized by DRI



Seizure of Gold by DRI

Year	Qty. in Kgs.	Value Rs. In Cr.
2014-15	890.499	338.24
2015-16	863.099	236.29
2016-17	600.965	230.65
2017-18	1282.390	410.14
2018-19	1440.728	457.46
2019-20 (Upto December)	1028.606	369.43

• Source:- DRI, CBIC

Note on Gold Sector by State of Kerala (1/4)



i. Data not fruitful: -

- Data from nominated agencies alone cannot be an indicator;
- Smuggled gold, old gold recycling and sale of pledged ornaments by NBFCs forms a major part of the business;
- Such items come to the possession of registered dealers and are sold outside accounts resulting in tax evasion.

Note on Gold Sector by State of Kerala (2/4)

ii. Reasons for transportation of Gold: -

- For Job Work
- By travelling salesman
- Stock Transfer (Different GSTIN)
- Branch transfer (Same GSTIN)
- Sale
- To and fro movement to hall marking Centres;
- In all such movements at least one registered dealer is involved.

13

Note on Gold Sector by State of Kerala (3/4)

iii. E-way bill System

- If e-Way bill implemented - duty of dealer to declare before transport;
- Vehicle details in e-Way bill can be dispensed and replaced with “the name and address of the person transporting the goods” and therefore issues relating to stoppage of public transport etc. can be avoided;
- Verification of e-Way bill for gold by officers can only be information based;
- All transactions recorded in the system - improve compliance and tax performance.

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Note on Gold Sector by State of Kerala (4/4)

iv. E-invoicing

- All type of movements (as mentioned at s.no (ii)) must be covered under e-invoicing for this sector (at present e-invoicing envisaged for cases of 'supply').

v. Reverse Charge Mechanism for old gold

- VAT had reverse charge provisions with rebate and it made the jewellers to record such transactions;
- Old gold may be notified under reverse charge.

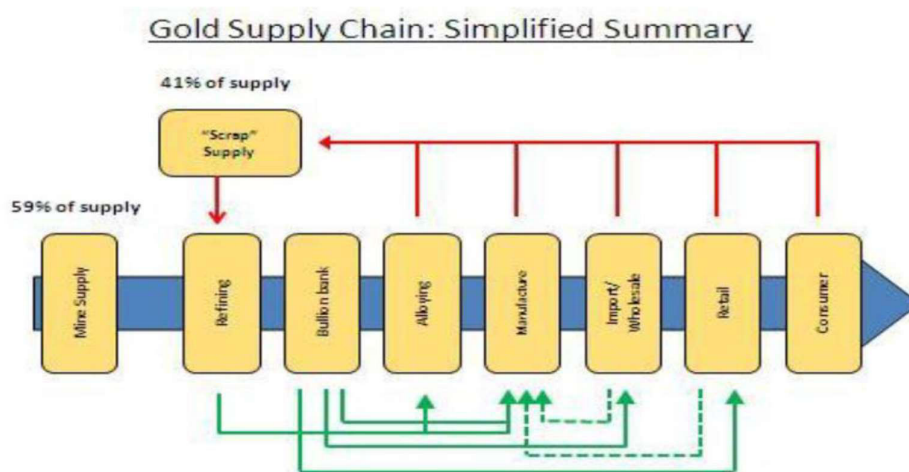
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Thank You

16

Note from Kerala State GST department as desired in Group of Ministers to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones, held in Kalpvriksha, North Block, New Delhi on 18th January, 2020

The data from nominated agencies alone cannot be an indicator in analyzing the tax performance of the gold sector. Smuggled gold, old gold recycling and sale of pledged ornaments by NBFCs forms a major part of the business. These items come to the possession of registered dealers and are sold outside accounts resulting in tax evasion. Unless, these transactions are brought into the books, the evasion in gold would continue. Given the peculiar nature of the commodity, where liquidity is high, stocks can be easily removed or hidden or transported and year-end audit would not throw light on evasion. Concurrent enforcement mechanism has to be in place. This is where the transporting document like e-way bill becomes effective.



The following are the probable transport scenarios in gold sector:

(a) Job work is one of the major reason for transport in gold. This could be intra-state or inter-state. In this case either of the person would be registered dealer. Present documentation needed for this transport in gold is a delivery challan serially numbered to be issued at the time of removal of goods for transportation, this is manual (Rule 55).

(b) One of the major reasons for transport peculiar to the sector is a travelling salesman who is a employed by a registered dealer (situated within or outside the state) who visits jewellerys, and the sale gets fructified only at the door step. Invoice is issued then and there. Unsold good is taken back by the salesman to the registered dealer. Present documentation needed for this transport in gold is a manual delivery challan serially numbered to be issued at the time of removal of goods for transportation. Sub-rule 4 of Rule 55 states that where tax invoice cannot issued at the time of

removal of goods, for the purpose of supply the supplier shall issue a tax invoice after delivery of goods.

(c) Thirdly, there is stock transfer by the same entities having different GSTINs. Co-relation between the quantity and value may be relevant in these transactions. This would be a supply and a tax invoice under Rule 46 will have to be issued and as per Rule 55A such invoice should accompany the transport of goods.

(d) Then there would be branch transfers between one shop to another shop / storage vault etc. of the same registered dealer. Here also, for gold, manual delivery challan under Rule 55 would apply.

(e) Then there are B to B and B to C supply transactions for which invoice under Rule 46 will have to be issued.

(f) There would also be movement of gold from registered dealer or job worker to hall marking centers and back.

With respect to gold, all these types of transactions presently require manual forms for transport and a registered dealer is involved in one point of the transaction. It is also not possible to envisage a scenario where a registered dealer is not involved. By introduction of e- Way bill, the only difference is that the details are captured electronically. Specifically, with regard to (b) stated above, there is a provision for “Line Sales” in e-Way bill.

The whole reason behind implementation of e-Way bill was that the dealers would be forced to account the transaction once e-Way bill is generated. Presently, the verification of e-Way bill is by the enforcement office or through the proposed RFID system. Enforcement verification is presently through chance verification or information-based verification. RFID verification may also not cover areas where there are no RFID readers. This verification only ensures whether the vehicle carries an e-Way bill. On suspicion the intercepting officer can inspect the goods under transport also. So, it is pertinent to note that the accounting of transactions included in the e-Way bill is not because of the threat of verification only. It is because of the legal mandate that such transport should be accompanied by e-Way bills that forces the dealer to comply.

It is true that e-Way bill is tagged to a vehicle and officers are empowered to detain the vehicle which does not have a valid e -Way bill. It is also true that gold is transported in private vehicles and public transport by persons. But, if e-Way bill is implemented in gold as with other commodities there is always a duty for the dealer to declare before transport. So, with respect to gold, the e- way bill will serve as a declaration before transport and as such the vehicle details in e-Way bill can be dispensed and replaced with “the name and address of the person transporting the goods”. With this, the issues relating to stoppage of public transport etc. can be avoided. Verification of e-Way bill for gold by

officers can only be information based. Dealers won't take a chance at this and all transactions would get recorded in the system. This would improve compliance and tax performance of the sector. This can be implemented through appropriate rule amendments.

SECRECY

Even in the current system, the courier must carry physical delivery challans/invoices for movement of gold. If e-way bill is implemented they need only carry the e-way bill number which he will have to reveal to the officer if chance detection happens. The details can be verified only by authorized officers. Even the courier does not need to know the contents and value. So the secrecy in the present system will not be compromised with the introduction of e-way bill.

e-Invoicing for Gold

Present e-Invoicing provisions cover only (c) and (e) above, i.e., only supply transactions. Unless other transactions / transport are electronically captured, e-invoice would not suffice for e-Way bill for gold and will not achieve the desired purpose.

Reverse charge on old gold

With the present Act and Rules, there is no reverse charge on Old Gold purchased by Registered Dealers. VAT had such provisions with rebate, and it made the jewellers to record such transactions. So completely close the evasion loop along with introduction of e-way bill, gold may be notified under reverse charge.

Annexure-C

F. No. CBEC- 20/13/02/2020-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board Indirect Taxes & Customs,
GST Policy Wing

Room No. 159-A, North Block,
New Delhi, January, 2022

OFFICE MEMORANDUM

Subject: Minutes of third meeting held on 16th November'2021 of Group of ministers to examine the feasibility of implementation of E-way Bill requirement for movement of gold and precious stones- reg.

This is with reference to the third meeting held on 16.11.2021 of the Group of Ministers to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones. The minutes of the said meeting duly approved by the Convenor Shri K N Balagopal, Hon'ble Finance Minister of Kerala are enclosed herewith.

Sanjay Mangal
27/1/2022

Sanjay Mangal
Pr. Commissioner (GST)
Email: sanjay.mangal@nic.in

To,

1. The Chief Commissioner/Commissioner, Commercial Tax of the States of Bihar, Gujarat, Karnataka, Kerala, Punjab, West Bengal with request to brief the Hon'ble Ministers about the minutes of the Meeting as above.

Copy To (for necessary information),

1. OSD to Revenue Secretary, Government of India
2. OSD to Chairman, CBIC
3. The Joint Secretary, GST Council Secretariat.

Encl: As above

Minutes of the 3rd Meeting of Group of Ministers to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones held on 16th November, 2021 – reg.

The third meeting of the Group of Ministers (GoM) to discuss feasibility of implementation of e-way bill for the movement of gold and precious stones was held on 16th November, 2021 under the Chairmanship of Shri K N Balagopal, Hon'ble Finance Minister of Kerala. The said meeting was conducted through video conferencing and the list of the attendees is enclosed as **Annexure – I**.

2. At the outset, Convenor of the GoM, Shri K N Balagopal welcomed all the participants and mentioned that two meetings of the GoM had already been held. He emphasized that as the matter is already delayed a lot and therefore GoM needs to finalize its recommendations in the present meeting itself. He also informed that the Committee of Officers, constituted by GoM in its 2nd meeting, has now submitted its report. He then requested Principal Commissioner, GST Policy Wing to brief the members of GoM regarding the deliberations and recommendations made by Group of Officers.
3. Principal Commissioner, GST PW made a brief presentation regarding the same. The copy of the presentation is enclosed as **Annexure - II**. He informed that in the 2nd meeting of GoM held on 14.08.2020, various options to track the movement of Gold and precious stones and to avoid evasion of tax in respect of gold and precious stones were deliberated, namely – e-way bill for intra-state movement of gold and precious stones; e-invoice for supply of gold and precious stones; and reverse charge mechanism for levy of GST on supply of old gold from unregistered persons to registered persons.

3.1 Principal Commissioner, GST PW stated that in the said meeting, GoM decided to constitute a Committee of Officers comprising member from the GoM, GSTN, NIC and GSTC secretariat to examine the feasibility of implementation of E- Way Bill requirement for movement of gold and precious stones and all other possible solutions to plug in revenue gaps.

3.2 He informed that the Committee of Officers held three meeting wherein the detailed deliberations were made on the following major issues mandated to it:

- To examine the feasibility of the system of intra-state e-way bills for movement of gold and precious stones.
- To examine all other possible solutions to plug in revenue gaps , including :
 - E-invoicing for supply of gold and precious stones; and
 - Reverse charge mechanism for levy of GST on purchase of old gold from unregistered persons by registered persons.

3.3 The Principal Commissioner, GST PW informed that after detailed deliberations, the Committee of Officers (CoO) made the following recommendations:-

A. Issue of e-way bill for movement of gold and precious stones:

(i) States should be allowed to impose requirement of e-way bill for intra-state movement of gold / precious stones within their states, if they so want.

(ii) A minimum threshold value of **Rs 2 lakh** for generation of e-way bills may be prescribed in such cases and the states can decide any amount above this value.

(iii) States to consult jurisdictional Principal Chief Commissioner/ Chief Commissioner of Central Tax, or any Commissioner authorized by him, for deciding about such requirement of e-way bill for intra-state movement of gold & precious stones within the state and the threshold value for the same.

(iv) **Only Part 'A'** on the e-way bill to be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill.

B. E-invoicing for gold and precious stones:

Regarding E-invoicing for gold/ precious stones, the CoO recommended that E-invoicing should be made mandatory **for B2B transactions** by all taxpayers supplying gold/ precious stones (i.e. goods of HSN code of Chapter 71), having **aggregate turnover above Rs 20 crore**.

C. Levy of GST on Reverse Charge mechanism on old gold:

The CoO recommended that the issue of levy of GST on reverse charge mechanism (RCM) on purchase of old gold by registered persons from unregistered persons **may be referred to Fitment Committee** for detailed examination.

4. After the presentation, the Convenor of GoM, Shri K N Balagopal requested other members of GoM to share their views on the recommendations made by the Committee of Officers.
5. Hon'ble Deputy Chief Minister of Bihar, Shri Tarkishore Prasad informed that the State of Bihar is in agreement with the recommendations made by Committee of Officers on all the three issues. He also suggested that as recommended by the Committee of Officers, the issue of levy of GST on reverse charge mechanism (RCM) on purchase of old gold from unregistered persons **may be referred to**

Fitment Committee for detailed examination, so as to ensure that no hindrance is caused to the trade due to the implementation of RCM on purchase of old gold.

6. Hon'ble Finance Minister of Gujarat, Shri Kanubhai M Desai stated that there are security concerns involved with movement of gold once the e-way bill is required for the same and therefore, states should be allowed to work on it. He however added that he, in principle, agreed with the recommendations of Group of Officers on all the three issues.
7. The Commissioner, Commercial Tax, Punjab informed that Hon'ble Finance Minister of Punjab could not participate in the meeting due to some prior engagements. He informed on behalf of the State of Punjab that they agree with the recommendations of Committee of Officers on all the three issues.
8. The Commissioner, Commercial Tax, Karnataka informed that Hon'ble Chief Minister of Karnataka could not participate in the meeting due to some exigency. She informed that State of Karnataka is in agreement with the recommendations of the Committee of Officers.
9. The Commissioner, Commercial Tax, West Bengal informed that Hon'ble Finance Minister of West Bengal could not participate in the meeting due to some prior engagements. While agreeing with the recommendations of the group of officers, he raised a concern that as per the wording of the present rule in CGST Rules, 2017, the unregistered buyer of gold/ precious stones may have to generate e-way bill, if the movement of goods is caused by such unregistered buyer, as the rule does not mandate registered supplier only to generate e-way bill in respect of supply made to such unregistered buyers. He was of the view that the legal requirement of generation of PART -A of e-way bill by supplier

only in such cases be incorporated in rule 138 of CGST Rules and the onus for any violation of the same should only lie with the concerned supplier.

10. The Principal Commissioner, GST Policy Wing clarified that as only Part "A" of the e-way bill will be required to be filled for intra-state movement of gold/ precious stones, as per recommendations of Group of Officers, the e-way bill in case of movement of gold/ precious stones should be generated by the registered supplier only, and the unregistered buyer should not be required to generate e-way bill in such cases. Therefore, a suitable amendment in CGST Rules 2017 may be required to make it mandatory for registered supplier only to generate e-way bill in such cases. He also mentioned that once a decision is taken by GST Council on e-way bill requirement for movement of Gold and Precious Stones, the corresponding amendment in CGST Rules can be deliberated by the Law Committee to provide for the same.

11. Hon'ble Finance Minister of Kerala and Convenor of GoM observed that there was an agreement amongst all the members about the recommendations of Group of Officers on all the three issues, viz. requirement of e-way bill for intra-state movement of gold/ precious stones, e-invoicing for gold/ precious stones and levy of GST on old gold on RCM basis. He said that the acceptance of the said recommendations will help in curbing evasion of tax on supply of gold and precious stones and will help the State of Kerala as well as other states in garnering more revenue.

12. Accordingly, the members of GoM unanimously agreed to make the following recommendations to the GST Council:-

A. E-way bill for intra-state movement of gold and precious stones:

A. E-way bill for intra-state movement of gold and precious stones:

- (i) The states should be allowed to decide about imposition of the requirement of e-way bill for intra-state movement of gold and precious stones within their states.
- (ii) There will be a minimum threshold of Rs 2 Lakh, and the states can decide any amount including or above this amount as minimum threshold for generation of E-way bill for intra-state movement of gold/precious stones in their state.
- (iii) Only Part 'A' on the e-way bill will be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill.
- (iv) Further modalities of generation of e-way bill for intra-state movement of gold/ precious stones will be as suggested by NIC/ GSTN.
- (v) For deciding about implementation of such a system of e-way bill for intra-state movement of gold and precious stones within the state, as well as regarding the threshold value to be adopted for generation of such e-way bill within the state, the procedure of consultation with the jurisdictional Principal Chief Commissioner/ Chief Commissioner of Central Tax, or any Commissioner authorized by him, should be followed by the States.
- (vi) Once e-way bill requirement for movement of Gold and Precious Stones is decided, the corresponding suitable amendment in CGST Rules, 2017 would have to be carried out. While finalizing amendment in Rules, it is to be ensured that in case of supply of gold by registered persons to unregistered buyers, the requirement of e-way bill generation is mandated on registered supplier only.

B. E-invoicing for Gold and precious stones:

(i) E-invoicing should be made mandatory for B2B transactions by all taxpayers supplying gold/ precious stones (goods of HSN 71) and having annual aggregate turnover above Rs 20 crore .

(ii) GSTN, in consultation with NIC, to work out the modalities and timelines for implementation of the proposed requirement of e-invoicing for gold/ precious stones.

C. Levy of GST on RCM basis on Old Gold:

The issue of levy on GST on reverse charge mechanism (RCM) basis on purchase of old gold by registered dealers/ jewellers from unregistered persons may be referred to Fitment Committee for detailed examination.

13. Hon'ble Finance Minister of Kerala and the Convenor of GoM thanked all the Members of GoM for arriving at the consensus and making the above unanimous recommendations to curb evasion of tax on gold and precious stones. He concluded the meeting after thanking all the officers of States, GST Policy Wing, GST Council Secretariat and GSTN for extending their full support and cooperation to the GoM.

Annexure – I

Sr. No.	Name (Smt./Shri)	Designation
1	Shri K N Balagopal	Minister of Finance, Kerala (Convenor)
2	Shri Tarkishore Prasad	Deputy Chief Minister, Bihar
3	Shri Kanubhai M Desai	Deputy Chief Minister, Gujarat
4	Shri Sanjay Mangal	Principal Commissioner, GST Policy Wing
5	Shri Rattan Kelkar	Commissioner, Commercial Tax, Kerala
6	Shri Milind S. Torawane	Chief Commissioner of State Tax, Gujarat
7	Shri Nilkanth S Avhad	Commissioner, Commercial Tax, Punjab
8	Ms C Shikha	Commissioner, Commercial Tax, Karnataka
9	Shri Khalid A. Anwar	Commissioner, Commercial Tax, West Bengal
10	Shri Arun Mishra	Special Secretary, Commercial Tax, Bihar
11	Smt Ashima Bansal	Joint Secretary, GSTC Secretariat
12	Shri Dheeraj Rastogi	Officiating EVP, GSTN
13	Shri Kshitendra Verma	Director, GSTC Secretariat
14.	Shri Nimba Ram	Additional Commissioner , GST Policy Wing
15.	Ms Kanika Dua	Deputy Commissioner, GST Policy Wing
16.	Shri Nitesh Gupta	Assistant Commissioner, GST Policy Wing



**3rd Meeting
of
Group of Ministers
on
E-way Bill for Movement of
Gold and Precious stones**

16th November 2021



Background

Constitution of Group of Ministers:

- GST Council in its 37th Meeting held in September 2019 decided to constitute a Group of Ministers (GoM) on E-way bill for gold and precious stones
- GoM constituted by GST Council Secretariat vide OM dated 22.11.2019

Mandate of GoM:

- To examine the feasibility of implementation of e-way bill requirement for movement of gold and other precious stones.

Deliberations by GoM

Meetings of GoM:

- First Meeting of GoM held on 18.01.2020.
- Second meeting of GoM held on 14.08.2020 through video conferencing.
 - The following options for tracking of the movement of Gold and precious stones and to avoid evasion of tax in respect of gold and precious stones were deliberated in 2nd meeting:
 - E-way bill for intra-state movement of gold and precious stones as per discretion of the State, as proposed by Kerala
 - E-invoice for supply of gold and precious stones
 - Reverse charge mechanism for levy of GST on supply of old gold from unregistered persons to registered persons
- In the 2nd Meeting, GoM decided to constitute a **Committee of Officers (CoO)** comprising of members from the GoM, GSTN, NIC and GSTC Secretariat
 - to examine the feasibility of the system proposed by Kerala and all other possible solutions to plug in revenue gaps.

**DELIBERATIONS
AND
RECOMMENDATIONS
OF
COMMITTEE OF OFFICERS**

Deliberations by Committee of Officers

- ❖ Committee of Officers held **three meetings**
 - First meeting held on 10.11.2020
 - Second meeting held through video conferencing on 18.02.2021
 - Third and final meeting held on 06.07.2021 through video conferencing
- ❖ Committee of Officers submitted its **Report** on 30.07.2021
- ❖ **The Committee held detailed deliberations on the following major issues mandated to it:**
 - **to examine the feasibility of the system of intra-state e-way bills for movement of gold and precious states proposed by State of Kerala**
 - **To examine all other possible solutions to plug in revenue gaps, including:**
 - **E-invoicing for supply of gold and precious stones; and**
 - **Reverse charge mechanism for levy of GST on purchase of old gold from unregistered persons by registered persons.**

Issue of E-way Bills for Intra-State Movement of Gold and Precious Stones, as per Proposal of Kerala (1/3)

Deliberations of CoO on the issue:

- Kerala proposed that States should be allowed to mandate generation of e-way bill for intra-state movement of gold and precious stones within their states, if they so desire.
- Kerala initially proposed that in **Part 'B'** of such E-way bills, instead of vehicle details, the name, address and ID details of the person transporting the goods can be captured.
- It was deliberated by CoO that the same will not help in interception of consignments during transportation, but may lead to security risk for the consignment as well as the person carrying the consignments
- Kerala then suggested that information in **Part 'A'** of the e-way bill declaration may be sufficient for intra-state movement of gold/ precious stones, without any need for **Part 'B'** declaration.
- NIC/ GSTN informed that such a system of generation of e-Way bill for intra-state movement of gold/ precious stones, with only details in Part 'A', can be implemented for goods falling under HSN code 71.

Issue of E-way Bills for Intra-State Movement of Gold and Precious Stones, as per Proposal of Kerala (2/3)

- CoO also suggested to have a **minimum threshold of value** for generation of e-way bill for such intra-state movement of gold/ precious stones, and the states can decide any threshold value above this minimum threshold, within their states.
- CoO also proposed that States may consult the jurisdictional Principal Chief Commissioner/ Chief Commissioner of Central Tax, or any Commissioner authorized by him, for deciding about implementation of such a system of intra-state e-way bill and the threshold value to be adopted.
- The Committee also suggested that while deciding about implementation of such system of e-way bill in the state for gold/ precious stones, the concerns about possible harassment that may be caused to genuine taxpayers/ traders and common citizens due to implementation of the said scheme, if any, may be kept in consideration.

Issue of E-way Bills for Intra-State Movement of Gold and Precious Stones, as per Proposal of Kerala (3/3)

Recommendation of CoO on the Issue:

- The states should be allowed to impose requirement of e-way bill for intra-state movement of gold/ precious stones within their states, if they so want.
- There should be a minimum threshold of Rs 2 Lakh, above which the states can decide any amount as threshold value for generation of E-way bill for intra-state movement of gold/ precious stones in their state.
- Only Part 'A' on the e-way bill will be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill.
- Further modalities of generation of e-way bill for intra-state movement of gold/ precious stones will be as suggested by NIC/ GSTN.
- States to consult the jurisdictional Principal Chief Commissioner/ Chief Commissioner of Central Tax, or any Commissioner authorized by him, for deciding about implementation of such a system of intra-state e-way bill and the threshold value.

Deliberations of CoO on Alternate Means to Plug the Gap and to Curtail Evasion of Tax

- **CoO deliberated on the following measures as alternate means to plug the gap in the system and to curtail evasion of tax in such commodities:**
 - ❖ Implementation of **e-invoicing** for intra-state as well as inter-state supply of gold and precious stones
 - ❖ Reverse Charge Mechanism (RCM) levy on purchase of old gold from the unregistered persons

Deliberations of CoO on Issue of E-invoicing for Supply of Gold and Precious Stones (1/2)

- CoO deliberated on the proposal for implementing e-invoicing for supply of gold and precious stones, based on
 - ❖ either a threshold of aggregate turnover of the taxpayer, or
 - ❖ on the basis of transaction value for a particular transaction i.e. per invoice
- Presently, e-invoice scheme has been implemented for taxpayers having annual aggregate turnover **above Rs. 50 crores** for **B2B** transactions only and **not** on B2C transactions.
- The Committee felt that implementing e-invoicing on the basis of value of a transaction/ invoice, irrespective of turnover of the taxpayer, may adversely affect smaller taxpayers.
- The Committee felt that instead, the threshold turnover limit for generation of e-invoice may be reduced for taxpayers dealing in gold/ precious metals.
- It was discussed that e-invoicing can be implemented uniformly throughout the country, in addition to the proposed intra-state e-way bill system.

Deliberations of CoO on Issue of E-invoicing for Supply of Gold and Precious Stones (2/2) |

Recommendations of the CoO on the Issue:

- E-invoicing should be made mandatory for B2B transaction by all taxpayers supplying gold/ precious stones (i.e. goods of HSN code of Chapter 71) above aggregate turnover of Rs 20 crore.
- E-invoicing may be implemented throughout the country, in addition to the proposed e-way bill system for intra-state movement of gold/ precious stones .
- GSTN and NIC to examine the feasibility of implementation of said e-invoicing proposal and to suggest timelines for implementation of the same.

201705/2022/001 COUNCIL

Deliberations of CoO on Issue of RCM levy on Purchase of Old Gold from Unregistered Person |

- CoO observed that purchase of old gold by gold dealers/ jewelers from unregistered persons is prone to evasion of duty
 - The said transactions may not get properly recorded
- CoO felt the need for a mechanism for recording of such supplies
 - One such measure can be levy of GST on reverse charge mechanism (RCM) on recipients, i.e. dealers/ jewelers
- CoO felt that detailed examination is required by the Fitment Committee regarding the implications of RCM levy on purchase of old gold on the common households/ persons.

Recommendations of the CoO on the Issue:

- The issue of levy of GST on reverse charge mechanism (RCM) on purchase of old gold from unregistered persons may be referred to Fitment Committee for detailed examination.

Summary of Recommendations of CoO

E-way bill for intra-state movement of gold/ precious stones:

- The states should be allowed to impose requirement of e-way bill for intra-state movement of gold/ precious stones within their states, if they so want.
- There should be a **minimum threshold value of Rs 2 Lakh** for generation of e-way bills in such cases and states can decide any amount above this value, if they want
- **Only Part 'A'** on the -way bill will be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill.

E-invoicing for gold/ precious stones:

- E-invoicing should be made mandatory **for B2B transaction** by all taxpayers supplying gold/ precious stones (i.e. goods of HSN code of Chapter 71) **above aggregate turnover of Rs 20 crore**.

RCM levy on purchase of old gold:

- The issue of levy of GST on reverse charge mechanism (RCM) on purchase of old gold from unregistered persons **may be referred to Fitment Committee** for detailed examination.

Thank You

Annexure D

File No. CBEC-20/13/02/2020-GS I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs
GST Policy Wing

Room No. 159-A, North Block
New Delhi, July, 2021

OFFICE MEMORANDUM

Subject: Final Report of the Committee of Officers to examine the feasibility of implementation of E-Way Bill requirement for movement of gold and precious stones- reg.

In pursuance of the decision taken in 37th GST Council Meeting held on 20th September, 2019; a Group of Ministers (GoM) was constituted by the GST Council Secretariat vide O.M. issued vide F. No. 591/GoM/Mvmt of Gold & Pre. Stones /GSTC /2019/9221-9225 dated 22.11.2019 with a mandate to examine the feasibility of implementation of e-way bill requirement for movement of Gold and other precious stones.

2. As an outcome of the 2nd Meeting of GoM, held on 14.08.2020 through Video Conferencing it was decided that a Committee of Officers (CoO) comprising of members from the GoM, GSTN, NIC and GSTC Secretariat, should examine the feasibility of the system proposed by Kerala and all other possible solutions to plug in revenue gaps.
3. The Committee of Officers held three meetings. Based on discussions in those meetings, the report of the Committee has been finalized, containing the recommendations of the committee. The report of the Committee of Officers is enclosed herewith to place the same before the Group of Ministers.


(Sanjay Mangal)

Pr. Commissioner (GST)

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Encl: As above.

To,
The Joint Secretary,
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Final Report of the Committee of Officers (CoO) formed by the Group of Ministers (GoM) to examine the feasibility of implementation of e-way bill requirement for movement of Gold and other precious stones

In pursuance to the decision taken in 37th GST Council Meeting held on 20th September, 2019, a Group of Ministers (GoM) was constituted by the GST Council Secretariat vide O.M. issued vide F. No. 591/GoM/Mvmt of Gold & Pre. Stones/GSTC /2019/9221-9225 dated 22.11.2019 with a mandate to examine the feasibility of implementation of e-way bill requirement for movement of Gold and other precious stones.

2. The second meeting of the GoM was held on 14.08.2020 through Video Conferencing. In the said Meeting, GoM decided to constitute a **Committee of Officers (CoO) comprising the officers from members of the GoM, GSTN, NIC and GSTC Secretariat, which should examine the feasibility of system of e-way bill for intra-state movement of gold and precious stones, as proposed by Kerala, and all other possible solutions to plug the gap in the system.** The minutes of the said meeting of GoM are enclosed as **Annexure A**.

2.1 In view of the above, the mandate of the Committee of Officers (CoO) was two-fold:

- a) To examine the feasibility of implementation of e-way bills system in respect of intra-state movement of gold and precious stones, as proposed by Kerala;
- b) To examine all other possible solutions to plug the gap in the system.

3. The Committee of Officers (CoO) held three meetings. The 1st meeting of the Committee of Officers was held on 10.11.2020, wherein preliminary discussions were held on the mandate given to the Committee, wherein inputs were sought from various members and GSTN/ NIC to further deliberate on the matter. The 2nd and 3rd meeting of Committee of Officers (CoO) were held on 18.02.2021 and 06.07.2021 respectively, wherein detailed deliberations were carried out on all the issues pertaining to mandate given to the Committee. The minutes of the 2nd and 3rd meeting are enclosed as **Annexure B** and **Annexure C** respectively. The following discussions were made by the Committee on the issues involved:

4. To examine the feasibility of implementation of e-way bills system in respect of intra-state movement of gold and precious stones, as proposed by Kerala.

4.1 Kerala proposed that states should be empowered to mandate generation of e-way bill for intra-state movement of gold and precious stones, to be made applicable within the states, if the state so desires. It was also proposed that the value limit/quantity limit for implementation of e-way bill for intra-state movement of gold, can also be left to the individual state. It was deliberated that the gold/ precious stones are generally carried by carriers/ angadias, etc. and may be carried more in public transports, like train, buses, etc. Besides, e-way bill requirement is only for movement of goods by motorised vehicles, whereas in case of gold/ precious stones, a lot of movement may be through non-motorised vehicles such as rickshaws, non-mechanised boats, etc. Considering this, Kerala initially proposed that in **Part B** of the e-way bill for gold/ precious stones, instead of vehicle details, the name, address and ID details of the person transporting the goods can be captured. During further discussions, it was deliberated that capture of personal details and ID of the person carrying gold will not serve any purpose and will not help in interception of such consignment during transportation, but may lead to security risk for the consignment as well as the person carrying the said consignment.

4.2 Taking into account the security concerns, Kerala suggested that information in **Part A** of the e-way bill declaration may be sufficient for intra-state movement of gold/ precious stones and that **Part B** of e-way bill declaration may be done away with in case of gold/ precious stones. The Officers from GSTN and NIC were requested to give their feedback/ inputs about feasibility of developing a system of implementing E-way bill for intra-state movement of gold/ precious stones, along with provision for different threshold of value/ quantity for generation of e-way bills in different states, as per discretion of the states.

4.3 The inputs/ feedback provided by NIC, in consultation with GSTN, on the feasibility of developing a system of implementing E-way bill for intra-state movement of gold/ precious stones are enclosed in **Annexure D**. NIC/ GSTN informed that such a system of generation of e-Way bill for intra-state movement of gold/ precious stones can be implemented on the portal and HSN code of Chapter 71 will be considered relevant for generation of such e-way bills. In such cases, e-way bill can be generated both by a registered person and by an unregistered person. These users will enter the **Part-A** details of the e-waybill as usual. **Part-A** details alone will be displayed to the users and can be filled up by them. **Part-B** details will not be required to be filled in by the users for generation of E-way Bill for the commodity “Gold/ Gold jewellery or Precious Stones”. The distance will be auto calculated based on the PIN codes of source and destination. If distance is not available for entered PIN code to PIN code, then validity of E-way bill can be made on the basis of the distance entered by the users. Users can cancel, reject or extend these E way bills, once generated. At present, no minimum threshold exists on the system for generation of E-way bill and user can generate e-way bill as per the rules in that particular State/ UT. The same can be made applicable to this functionality for e-way bills for gold/ precious stones also. The development of this module will take around 3-4 weeks’ time from the date of approval of the proposal.

4.4 Observing that as there are no technical or system related issues in implementation of such system of generation of e-way bill for intra-state movement of gold/ precious stones as per the inputs/ feedback provided by GSTN/NIC, The Committee of Officers decided to recommend to GoM about implementation of the proposal of Kerala for allowing states to prescribe requirement of e-way bill for intra-state movement of gold/ precious stones, if they so desire. The Committee also decided that a minimum threshold of value need to be prescribed for generation of e-way bill for such intra-state movement of gold/ precious stones, and the states can decide any threshold value above this minimum threshold, as per their wish. The Committee recommended a minimum threshold of Rs 2 Lakhs.

4.5 The Committee noted that under Rule 138 (14) (d) of the CGST Rules, 2017, in respect of intra-state e-way bill, the State Tax Commissioners have been empowered to decide upon exemptions within the State, in consultation with the jurisdictional Principal Chief Commissioner/ Chief Commissioner of Central Tax. The Committee, therefore, recommended that in case of e-way bill for intra-state movement of gold/ precious stones in the state also, such a procedure of consultation with the jurisdictional Principal Chief Commissioner/ Chief Commissioner of Central Tax, or any Commissioner authorized by him, should be followed by the States for deciding about implementation of such a system as well as threshold value to be adopted. The Committee also suggested that while deciding about implementation of such system of e-way bill in the state for gold/ precious stones, the States should also keep in consideration the concerns about possible harassment that may be caused to genuine taxpayers/ traders and common citizens due to implementation of the said scheme.

5. To examine all other possible solutions to plug the gap in the system

5.1 The Committee deliberated on the following alternate means to plug the gap in the system and to curtail evasion of tax in respect of gold and precious stones:

I. Implementation of e-invoicing for both intra-state and inter-state supply of gold and precious stones

II. RCM levy on purchase of old gold from unregistered persons

5.2 Implementation of e-invoicing for both intra-state and inter-state supply of gold and precious stones

5.2.1 On the issue of need for implementation of e-invoicing for both intra-state and inter-state supply of gold and precious stones, it was suggested by Gujarat that mandating e-invoicing for supply of gold and precious stones can be considered as one of the measures to plug the gap in the system. It was proposed that e-invoice for gold can either be implemented based on a threshold of aggregate turnover of the taxpayer or on the basis of transaction value for a particular transaction i.e. per invoice. The Committee deliberated on this proposal. It was discussed that e-invoicing can be implemented uniformly throughout the country, in addition to the proposed intra-state e-way bill system.

5.2.2 The Committee noted that presently, e-invoice scheme has been implemented for taxpayers having annual aggregate turnover above 50 crores for B2B transactions only and **not** on B2C transactions. The Committee felt that implementing e-invoicing on the basis of value of a transaction/ invoice, irrespective of turnover of the taxpayer, may adversely affect smaller taxpayers, as there may be few transactions involving higher value for such smaller taxpayers, which will necessitate them to have technical capability for generation of e-invoice. Such a system will be difficult to implement practically and may have operational challenges also. The Committee felt that instead, the threshold turnover limit for generation of e-invoice may be reduced for taxpayers dealing in gold/ precious metals.

5.2.3 Sh. PV Bhatt, Deputy Director General, NIC informed the Committee that they need to examine the issue of feasibility of implementation of e-invoice system for a particular commodity (gold and precious stones) below threshold turnover provided for other commodities, after having a look at the data for number of taxpayers involved in gold/ precious stones transactions, their registration details and number of transactions, etc. Only after detailed examination, they can give their feedback about the feasibility of such an e-invoice system for a particular commodity.

5.2.4 After detailed discussions, the Committee decided that e-invoice generation for gold/ precious stones should be on the basis of threshold limit of aggregate turnover and that a threshold limit of Rs 20 crore for generation of e-invoice for gold/ precious stones may be considered for recommending to GoM at this stage. Besides, GSTN & NIC may be requested to examine the feasibility of it, and once the modalities of this system and the timeline for implementation is worked out by GSTN & NIC, and then the same can be implemented.

5.3 RCM levy on purchase of old gold from unregistered persons

5.3.1 The Committee observed that the purchase of old gold by gold dealers/ jewellers from unregistered persons, either on cash basis or on barter basis, is prone to evasion of duty, since the said

transactions may not get properly recorded by the dealers/ jewellers. It was felt that there may be a need for a mechanism for recording of such supplies by unregistered persons, and one of the measures for the same can be levy of GST on reverse charge mechanism (RCM) on recipients of old gold, i.e. dealers/ jewellers. It was however felt that there may be a need for detailed examination of the implications of such a RCM levy on purchase of old gold on the common households and citizens, who are selling / bartering old gold and the Fitment Committee may be the proper forum for such detailed examination. The Committee agreed that the issue of levy of RCM on purchase of old gold needs to be examined in detail by the Fitment Committee and hence, the same may be recommended to the GoM accordingly.

6. After detailed discussions and deliberations held in the three meetings, the Committee of Officer makes the following recommendations to the GoM:

A. The states should be allowed to decide about imposition of the requirement of e-way bill for intra-state movement of gold/ precious stones within their states. There will be a minimum threshold of Rs 2 Lakh, above which the states can decide any amount as threshold for generation of E-way bill for intra-state movement of gold/ precious stones in their state. Only Part 'A' on the -way bill will be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill. Further modalities of generation of e-way bill for intra-state movement of gold/ precious stones will be as suggested by NIC/ GSTN. Further, for deciding about implementation of such a system as well as threshold value to be adopted the procedure of consultation with the jurisdictional Principal Chief Commissioner/ Chief Commissioner of Central Tax, or any Commissioner authorized by him, should be followed by the States.

B. E-invoicing should be made mandatory for B2B transactions by all taxpayers supplying gold/ precious stones (goods of HSN 71) above annual aggregate turnover of Rs 20 crore. GSTN in consultation with NIC to examine the feasibility of implementation of the proposed requirement of e-invoicing for gold/ precious stones by taxpayers above aggregate turnover above Rs 20 crore and to give a detailed proposal on the modalities of the same and timelines for the implementation of the same.

C. The issue of levy on GST on reverse charge mechanism (RCM) basis on purchase of old gold by registered dealers/ jewellers from unregistered persons may be referred to Fitment Committee for detailed examination.

Minutes of the 2nd Meeting of Group of Ministers

to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones held on 14th August, 2020 – reg.

The second meeting of the Group of Ministers (GoM) to discuss feasibility of implementation of e-way bill for the movement of gold and precious stones was convened on 14th August, 2020 under the chairmanship of Dr. T.M. Thomas Isaac, Hon'ble Finance Minister of Kerala. The said meeting was conducted through video conferencing and the list of the attendees is enclosed as **Annexure – I**.

2. At the outset, chairman of the GoM, Dr.T M Thomas Isaac welcomed all the participants to the meeting and reiterated the fact that the matter has been discussed in the GST Council Meeting wherein it was recommended to constitute a GoM on the matter. GoM had held a meeting on it. He informed that Kerala has a set of new proposal as well which he would subsequently discuss in the meeting. He then requested Principal Commissioner, GST Policy Wing to make the opening presentation on the same.

3.1 Principal Commissioner, GST made a presentation which is enclosed as **Annexure - II**. He informed members of GoM that based on the discussion held in the last meeting on 18.01.2020, it was decided to collect data on revenue collection, import, export, consumption, price trends and estimate of smuggling of gold from various sources and alternative measures was to be considered for prevention of revenue loss based on such data. He further informed that data was collected from DG Systems, DGFT, DRI, World Gold Council, GJEPC and Dept. of Economic Affairs and was circulated to the members of GoM.

3.2 He also informed further that data on GST revenue from gold was received from GSTN. The same was based on data from FORM GSTR-3B of those taxpayers who have mentioned Chapter 71 in top five HSN in their registration form.

3.3. Members were also briefed about the note sent by Kerala. The said note is enclosed as **Annexure – III**. As per the note of Kerala, data in respect of gold was not fruitful as it cannot capture data relating to smuggled gold, old gold recycling and sale of pledged ornaments by NBFCs which forms a major part of the business. Note also pointed out the various reasons for movement of gold and highlighted that in such movements at least one registered entity is always involved. It emphasised the need of e-way bill system and recommended that vehicle details in e-way bill can be replaced with “the name and address of the person transporting the goods” and therefore issues relating to stoppage of public transport etc. can be avoided. It also recommended that all types of movement should be covered under e-invoicing system. Reverse charge mechanism for old gold in GST regime on the same model as that existed in erstwhile VAT regime was also emphasised in the note.

4.1 After the presentation, the Chairman of GoM, Dr. T M Thomas Isaac made an observation that there has been decline in the revenue collection from gold with simultaneous sharp surge in smuggling of gold. He said that the tax evasion has increased due to the fact that no documents are required for movement of gold. There is no check on such movements. The system as of now is conducive for smuggling and we must have some system for tracking the same. Thereafter, he stated that various State Governments have raised security concerns on gold in case of implementation of e-

way bill system. He suggested that in order to maintain the safety of gold during movement, encrypted e-way bill maybe used whose data shall be restricted with an officer not less than the rank of Commissioner. He further suggested that reports regarding transportation of gold shall be made available after completion of movement of gold and the carrier may be allowed to carry gold without any hard copy of documents.

4.2 Deputy Chief Minister of Bihar, Shri Sushil Kumar Modi informed that the revenue for the State of Bihar from gold has increased with implementation of GST. He informed that revenue from gold in FY 16-17 was Rs. 38 crores which increased to Rs. 95 crore in FY 18-19 and 123.48 crore in FY 19-20.

4.3 Deputy Chief Minister of Gujarat, Shri Nitinbhai Patel strongly opposed the idea of e-waybill system for gold movement. He informed that both diamond and gold business has strong presence in Gujarat. He informed the GoM that international airport and MCX exchange are present in Ahmedabad and nearly 23% of the gold imported in the country is being imported through Ahmedabad. [He said that business of both viz. recycled and new gold is carried out in Gujarat. Old gold is melted and new jewellerys are made out of it. He further said that other cities where the gold primarily moves from Gujarat are Jaipur, Hyderabad and Delhi. In Gujarat, three important cities in respect of business of gold are Ahmedabad, Rajkot and Surat]. He further informed that movements of gold is done very securely, discreetly and generally in small packets as it is a high value item. He insisted that ensuring security to the businessman dealing in gold is primary responsibility of State Government, therefore, any disclosure on movement of gold is potentially risky area. At present, import has declined substantially in last two years and implementation of e-way bill system will further create more issues for them, particularly honest and law abiding tax payers. Therefore, our state is not in favour of e-way bill and an alternate way must be thought of.

4.4 Shri Sushil Kumar Modi stated that if e-way bill data is restricted with Commissioner then it cannot be checked and verified on road. The purpose of e-waybill system will be lost if it cannot be checked during movement. He further stated that e-waybill system without vehicle number for gold will complicate the matter and not resolve the issue of smuggling of gold while transportation. He emphasised the fact that for the gold that moves through legal channel, information is available about who is importer, whom is he supplying etc. On that point, Shri Nitinbhai Patel made a remark that that there are approximate only twenty companies which are in this sector in the State of Gujarat. Shri Sushil Kumar Modi continued by stating that in Bihar primarily job work is carried out and a complicated supply chain is involved in such type of work. He stated that e-way bill system for gold is very impractical and an alternative method may be discussed for the same in terms of Section 68 of the CGST Act that provides for inspection of goods in movement and Section 129 that provides for detention, seizure and release of goods in transit. He further suggested that e-invoice may also be discussed as an alternate for e-way bill to prevent smuggling of gold if these Sections of Act are not effective. But, e-way bill system will make matter more complicated.

5.1 Thereafter, Chairman of the GoM, Dr.T M Thomas Isaac stated that there are many commodities wherein freedom has been given to a State for intrastate movement to decide whether e-way bills are required for movement of such commodities. So, in case of movement of gold as well, States should be allowed to decide about requirement of e-way bill system for movement within the state. He further informed that a note has already been sent suggesting amendment in CGST Rules to allow e-way bill System for movement of gold within territory of a State.

5.2 Shri Sushil Kumar Modi enquired whether the said proposal of Kerala for e-way bill system is for movement of intra-State supplies or for any supply which has movement in Kerala. Commissioner, Commercial Tax, Kerala informed that the proposed system may be for any movement of Kerala irrespective of fact that the concerned supply is inter-State or intra-State.

6.1 Principal Commissioner, GST informed members of GoM that the e-way bill system is only for motorised vehicles. On making e-way bill system mandatory for gold movement, it may happen that movement of gold may start from non-motorised vehicles such as rickshaw and even non mechanized boats. Further, the purpose of mandating an e-way bill will not be served if the vehicle number is to be substituted with individual name and ID details of the carrier and details of the same are to be made available when the movement gets completed.

6.2 He further emphasised that the main concern is the gap in reporting system. The primary area of such gap is movement of gold for the purpose of 'job work' and 'sale on approval basis'. In light of the same, alternative system of reporting for the said gap could be explored so that the accountal is complete. He suggested that one such solution may be to increase the frequency of FORM GST ITC-04 for reporting of gold sent for job work. At present, such form is to be submitted every quarter whereas Gold and other precious goods do not normally remain with the job-worker for such a long duration.

7.1 Deputy Chief Ministers of Bihar and Gujarat said that the new proposal from Kerala is welcome, and that the States may have independence in deciding the requirement of e-way bill system on certain sensitive goods. Chief Commissioner, State Tax, Gujarat stated that bigger issue in respect of tax evasion is the recycled gold and informal channel through which gold is sold. These transactions need to be brought into the tax net. Another important aspect in the sector is the value addition done during the job work. There is clear demarcation of the industry. On these lines with almost half of the sector being mechanised and other half manual. He further stated that industry needs to be engaged in the same before a viable and implementable solution is found out to prevent tax evasion.

7.2. Chairman of the GoM, Dr.T M Thomas Isaac stated that reverse charge mechanism in old gold maybe considered on line with the practices in erstwhile VAT regime. He also said that the provisions of e-invoicing may also be considered for this sector. He further informed that raids were conducted on 64 shops in Kerala. But, no headway is being made in investigation as no information can be obtained from the software and servers. Officers should work out on these issues and make alternate proposal in the next meeting. He requested other states present in the meeting to make proposal.

7.3 Commissioner, Commercial Tax, Karnataka also endorsed the same view of intra-State e-way bill and e-invoice for gold. He further stated that evaluation may also be made on legality and technical aspect of introducing e-way bill system. Commissioner, Commercial Tax, Punjab added that States should have independence with e-way bill system and encrypted form of e-way bill may be used for intra-State supply. Principal Commissioner, GST informed that the same would need to be discussed with the officers of GSTN and NIC and other alternate options, if any, shall also be discussed to curb smuggling of gold.

8. The Chairman of GoM, Dr.T M Thomas Isaac instructed that a Committee of Officers comprising the officers from member of this GoM, GSTN, NIC and GST Council Secretariat should examine the feasibility of system proposed by Kerala and all other possible solutions to plug the gap in the system. The Chairman also requested GST Council Secretariat for revenue collection figures during the VAT regime for the period 2016-17.

9. The GoM ended with vote of thanks from the Chairman. The date and time of next meeting shall be communicated separately.

Annexure – I

Sr. No.	Name (Smt./Shri)	Designation
1	Dr.T.M.Thomas Isaac	Minister of Finance, Kerala
2	Shri Sushil Kumar Modi	Deputy Chief Minister, Bihar
3	Shri Nitinbhai Patel	Deputy Chief Minister, Gujarat
4	Shri Yogendra Garg	Principal Commissioner, GST Policy Wing
5	Shri Sanjay Mangal	Commissioner, GST Policy Wing
6	Shri Manish Sinha	EVP, GSTN
7	Smt Ashima Bansal	Joint Secretary, GSTC Secretariat
8	Shri J P Gupta	Chief Commissioner, Commercial Tax, Gujarat
9	Shri Anand Singh	Commissioner, Commercial Tax, Kerala
10	Shri Nilkanth S Avhad	Commissioner, Commercial Tax, Punjab
11	Shri Srikar MS	Commissioner, Commercial Tax, Karnataka
12	Shri Kiran Kumar	Additional Director, DRI
13	Shri Nimba Ram	Joint Commissioner, GST Policy Wing
14	Smt Nisha Gupta	Joint Commissioner, GST Policy Wing
13	Nilesh Kumar Rai	Deputy Director, DRI
14	Shri Kumar Asim Anand	Deputy Commissioner, GST Policy Wing
15	Shri Krishna Koundinya	Under Secretary, GSTC Secretariat
16	Shri J Ravi Shankar	Director, MMTC
17		MMTC

2nd Meeting of Group of Ministers

to examine the feasibility of implementation of e-way Bill requirement exemption for movement of gold and precious stones

14.08.2020

1

Decisions in 1st Meeting held on 18.01.2020

591-GOM-MVMT OF GOLD & PRE. STONES-GSTC-2019

NATION
TAX
MARKET

- Data/ information on revenue, import, export, consumption, price trend and estimate of smuggling of gold from various sources to be collected;
- Based on the data, alternative options for preventing loss of revenue in the sector needs to be considered;
- Other agencies (MMTC and DRI) may be called in the next meeting for holistic understanding of the sector;
- State of Kerala to present a note on the matter.

2

Action taken by GST Policy Wing



- Data/ information collected from following sources: -
 - DG System, CBIC;
 - DGFT, Ministry of Commerce;
 - DRI, CBIC;
 - Dept. of Economic Affairs, Ministry of Finance;
 - World Gold Council;
 - GJEPC;
- Above data circulated to the members of GoM;
- Revenue figures on gold collected from GSTN;
- Analysis of important statistics in the following slides.

3

Data - Revenue (GSTN)

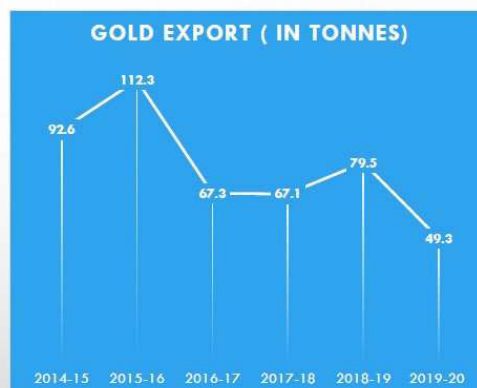


F.Y.	Turnover	Liability	Paid by ITC	Paid by Cash
2017-18	27,56,296	76,855	63,576	13,281
2018-19	37,10,737	1,13,176	96,967	16,209
2019-20	31,46,633	1,13,414	97,878	15,536

- Amount in Rs. crore
- Data prepared on basis of FORM GSTR-3B of those taxpayers who have been mentioned in their registration form that they deal in item under HSN Code 71 as their top five HSN . For the said taxpayers, the turnover & tax payment details have been arrived at from values reported in Tables-3.1(a), (b), (c) & (e) and Table-6 of GSTR-3B respectively.

4

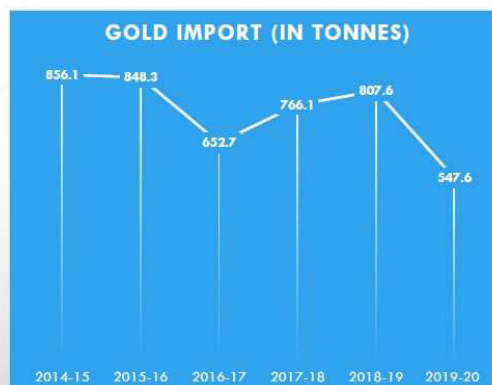
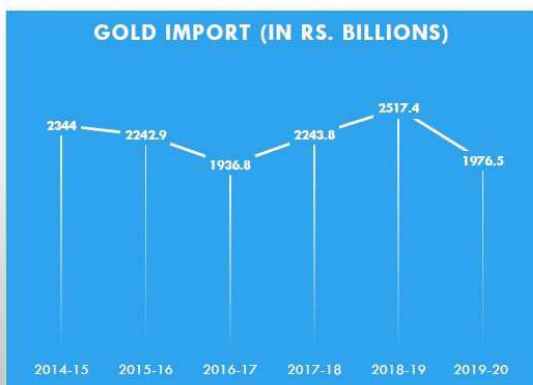
Data – World Gold Council (Export)



- Exports only includes exports of gold jewellery and gold bullion (medallion and coins) and excludes Round Tripping volumes
- FY 2019-20 – Apr, 19 to Jan, 20
- Source: Metals Focus; World Gold Council (as on 26.04.2020)

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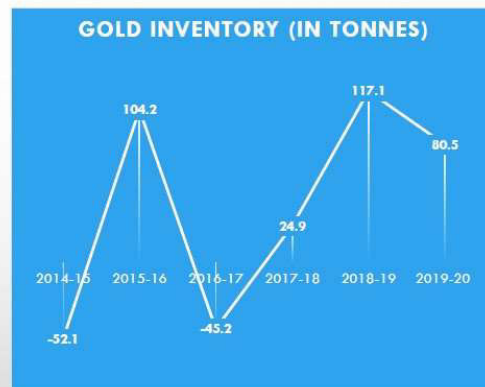
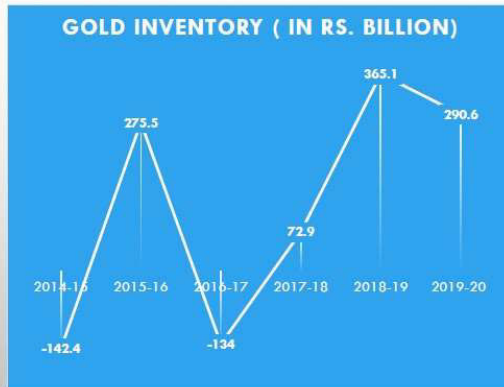
Data – World Gold Council (Import)



- Imports include gold dore' also in fine gold terms
- FY 2019-20 – Apr, 19 to Jan, 20
- Source: Metals Focus; World Gold Council (as on 26.04.2020)

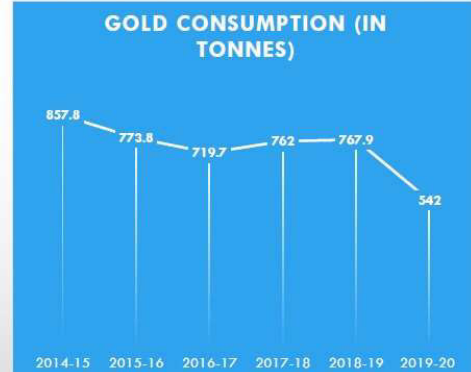
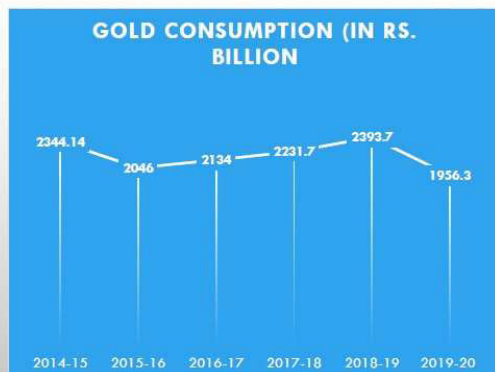
6

Data – World Gold Council (Inventory)



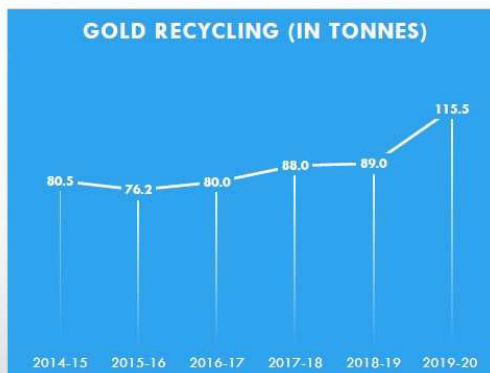
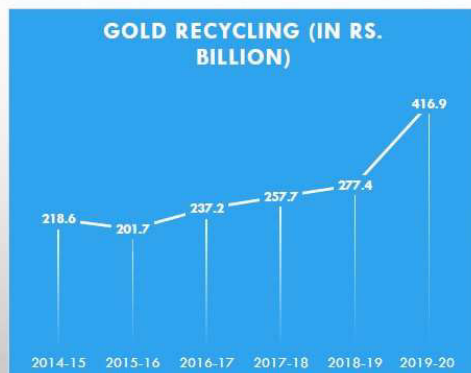
- Inventory represents bullion inventory, does not include jewellery inventory in merchandise stores
- FY 2019-20 – Apr, 19 to Jan, 20
- Source: Metals Focus; World Gold Council (as on 26.04.2020)

Data – World Gold Council (Consumption)



- Consumption includes both gold jewellery and gold investment (bar and coin) demand
- FY 2019-20 – Apr, 19 to Jan, 20
- Source: Metals Focus; World Gold Council (as on 26.04.2020)

Data – World Gold Council (Recycling)



- FY 2019-20 – Apr, 19 to Jan, 20
- Source: Metals Focus; World Gold Council (as on 26.04.2020)
- All the above data excludes : Central bank (RBI) purchases, grey market volumes, gold / jewellery purchased new by recycling old gold/jewellery; secondary sales of jewellery held as collaterals on defaulted loans

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Data – Price Index of Gold



- Source:- Prices Unit, Dept. of Economic Affairs
- CPI- Consumer Price Index Combined for Gold
- WPI- Wholesale Price Index for Gold and Gold Ornaments

10

Data – Gold seized by DRI



Seizure of Gold by DRI

Year	Qty. in Kgs.	Value Rs. In Cr.
2014-15	890.499	338.24
2015-16	863.099	236.29
2016-17	600.965	230.65
2017-18	1282.390	410.14
2018-19	1440.728	457.46
2019-20 (Upto December)	1028.606	369.43

• Source:- DRI, CBIC

Note on Gold Sector by State of Kerala (1/4)



i. Data not fruitful: -

- Data from nominated agencies alone cannot be an indicator;
- Smuggled gold, old gold recycling and sale of pledged ornaments by NBFCs forms a major part of the business;
- Such items come to the possession of registered dealers and are sold outside accounts resulting in tax evasion.

Note on Gold Sector by State of Kerala (2/4)

ii. Reasons for transportation of Gold: -

- For Job Work
- By travelling salesman
- Stock Transfer (Different GSTIN)
- Branch transfer (Same GSTIN)
- Sale
- To and fro movement to hall marking Centres;
- In all such movements at least one registered dealer is involved.

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Note on Gold Sector by State of Kerala (3/4)

iii. E-way bill System

- If e-Way bill implemented - duty of dealer to declare before transport;
- Vehicle details in e-Way bill can be dispensed and replaced with “the name and address of the person transporting the goods” and therefore issues relating to stoppage of public transport etc. can be avoided;
- Verification of e-Way bill for gold by officers can only be information based;
- All transactions recorded in the system - improve compliance and tax performance.

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Note on Gold Sector by State of Kerala (4/4)

iv. E-invoicing

- All type of movements (as mentioned at s.no (ii)) must be covered under e-invoicing for this sector (at present e-invoicing envisaged for cases of 'supply').

v. Reverse Charge Mechanism for old gold

- VAT had reverse charge provisions with rebate and it made the jewellers to record such transactions;
- Old gold may be notified under reverse charge.

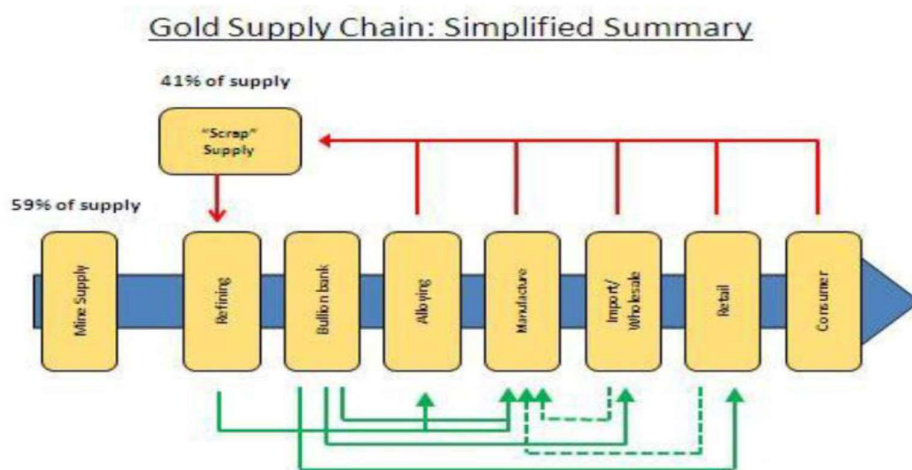
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Thank You

16

Note from Kerala State GST department as desired in Group of Ministers to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones, held in Kalpvriksha, North Block, New Delhi on 18th January, 2020

The data from nominated agencies alone cannot be an indicator in analyzing the tax performance of the gold sector. Smuggled gold, old gold recycling and sale of pledged ornaments by NBFCs forms a major part of the business. These items come to the possession of registered dealers and are sold outside accounts resulting in tax evasion. Unless, these transactions are brought into the books, the evasion in gold would continue. Given the peculiar nature of the commodity, where liquidity is high, stocks can be easily removed or hidden or transported and year-end audit would not throw light on evasion. Concurrent enforcement mechanism has to be in place. This is where the transporting document like e-way bill becomes effective.



The following are the probable transport scenarios in gold sector:

(a) Job work is one of the major reason for transport in gold. This could be intra-state or inter-state. In this case either of the person would be registered dealer. Present documentation needed for this transport in gold is a delivery challan serially numbered to be issued at the time of removal of goods for transportation, this is manual (Rule 55).

(b) One of the major reasons for transport peculiar to the sector is a travelling salesman who is a employed by a registered dealer (situated within or outside the state) who visits jewellerys, and the sale gets fructified only at the door step. Invoice is issued then and there. Unsold good is taken back by the salesman to the registered dealer. Present documentation needed for this transport in gold is a manual delivery challan serially numbered to be issued at the time of removal of goods for transportation. Sub-rule 4 of Rule 55 states that where tax invoice cannot issued at the time of

removal of goods, for the purpose of supply the supplier shall issue a tax invoice after delivery of goods.

(c) Thirdly, there is stock transfer by the same entities having different GSTINs. Co-relation between the quantity and value may be relevant in these transactions. This would be a supply and a tax invoice under Rule 46 will have to be issued and as per Rule 55A such invoice should accompany the transport of goods.

(d) Then there would be branch transfers between one shop to another shop / storage vault etc. of the same registered dealer. Here also, for gold, manual delivery challan under Rule 55 would apply.

(e) Then there are B to B and B to C supply transactions for which invoice under Rule 46 will have to be issued.

(f) There would also be movement of gold from registered dealer or job worker to hall marking centers and back.

With respect to gold, all these types of transactions presently require manual forms for transport and a registered dealer is involved in one point of the transaction. It is also not possible to envisage a scenario where a registered dealer is not involved. By introduction of e- Way bill, the only difference is that the details are captured electronically. Specifically, with regard to (b) stated above, there is a provision for “Line Sales” in e-Way bill.

The whole reason behind implementation of e-Way bill was that the dealers would be forced to account the transaction once e-Way bill is generated. Presently, the verification of e-Way bill is by the enforcement office or through the proposed RFID system. Enforcement verification is presently through chance verification or information based verification. RFID verification may also not cover areas where there are no RFID readers. This verification only ensures whether the vehicle carries an e-Way bill. On suspicion the intercepting officer can inspect the goods under transport also. So, it is pertinent to note that the accounting of transactions included in the e-Way bill is not because of the threat of verification only. It is because of the legal mandate that such transport should be accompanied by e-Way bills that forces the dealer to comply.

It is true that e-Way bill is tagged to a vehicle and officers are empowered to detain the vehicle which does not have a valid e - Way bill. It is also true that gold is transported in private vehicles and public transport by persons. But, if e-Way bill is implemented in gold as with other commodities there is always a duty for the dealer to declare before transport. So, with respect to gold, the e- way bill will serve as a declaration before transport and as such the vehicle details in e-Way bill can be dispensed and replaced with “the name and address of the person transporting the goods”. With this, the issues relating to stoppage of public transport etc. can be avoided. Verification of e-Way bill for gold by officers can only be information based. Dealers won’t take a chance at this and all transactions would get recorded in the system. This would improve compliance and tax performance of the sector. This can be implemented through appropriate rule amendments.

SECURITY

Even in the current system, the courier must carry physical delivery challans/invoices for movement of gold. If e-way bill is implemented they need only carry the e-way bill number which he will have to reveal to the officer if chance detection happens. The details can be verified only by authorized

officers. Even the courier does not need to know the contents and value. So the secrecy in the present system will not be compromised with the introduction of e-way bill.

e-Invoicing for Gold

Present e-Invoicing provisions cover only (c) and (e) above, i.e., only supply transactions. Unless other transactions / transport are electronically captured, e-invoice would not suffice for e-Way bill for gold and will not achieve the desired purpose.

Reverse charge on old gold

With the present Act and Rules, there is no reverse charge on Old Gold purchased by Registered Dealers. VAT had such provisions with rebate, and it made the jewellers to record such transactions. So completely close the evasion loop along with introduction of e-way bill, gold may be notified under reverse charge.

File No. CBEC-20/13/02/2020-GST / 713-21
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs
GST Policy Wing

08/04/2021

Room No. 159-A, North Block
New Delhi, April, 2021

OFFICE MEMORANDUM

Subject: Record of Discussion of the 2nd Meeting of the Committee of Officers on to examine the feasibility of implementation of E-Way Bill requirement for movement of gold and precious stones- reg.

This is in reference to the second meeting held on 18.02.2021 of the Committee of Officers to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones. The minutes of the said meeting are enclosed herewith.

Sanjay Mangal
8/4/22

(Sanjay Mangal)
Commissioner (GST)
Email: sanjay.mangal@nic.in

To,

1. The Commissioner, Commercial Tax of the States of Bihar, Gujarat, Karnataka, Kerala, Punjab, West Bengal
2. The Joint Secretary, GST Council Secretariat.
3. The CEO, GSTN.
4. The SVP (Services), GSTN.

Encl: As above.

RoD-2nd meeting of the CoO E-way Bill requirement
for movement of Gold - Dated 18.02.2021

Record of Discussion of the 2nd Meeting of the Committee of Officers on to examine the feasibility of implementation of E- Way Bill requirement for movement of gold and precious stones.

The second meeting of the Committee of Officers, to examine the feasibility of implementation of E-Way Bill requirement for movement of gold and precious stones and all other possible solutions to plug in revenue gaps was held on 18.02.2021 through video conferencing and the list of the attendees is enclosed as Annexure -I.

2. At the outset, Sh. Sanjay Mangal, Commissioner, GST Policy Wing welcomed all the participants to the meeting and made the opening presentation on the issues involved and 2. the gist of information / comments sent by GSTN, Kerala, Karnataka, Gujarat and GST Policy Wing.

2.1 The officers from the State of Kerala suggested that there is no check on movement of Gold leading to rampant smuggling of gold and tax evasion. They emphasised the requirement of a system to track tax evasion in Gold through reporting and surveillance. They suggested that e-way bill declaration for intra-state movements of gold should be made applicable within such states, if the state so desires and also the value limit/quantity limit for implementation of e-way bill for intra-state movement of gold, can also be left to the states. Taking into account the security concerns, they stated that information in Part A of the e-way bill declaration would be sufficient for intra-state movement of gold and that the Part B of e-way bill declaration in such cases may be done away with. The officers from the State of Punjab and Karnataka supported the above proposal given by Kerala.

2.2 The officers from the State of Gujarat expressed their concerns related to declaration of movement of gold in E-way bill. They stated that this information, if leaked, can be used by the thieves, robbers to plunder the valuable cargo, putting a great risk to both goods and the carrier of gold. The officers of Gujarat SGST proposed implementation of e-invoicing for both intra-state and inter-state supply of gold as the same will not require any amendment in Rule 138 of CGST Act, 2017 and can be implemented uniformly throughout the country. In support of their proposal, they also stated that there is not much difference in the data captured/ reflected by part-A of e-way bill and e-invoice facility. Hence, they reiterated their view and said that e-invoice facility in case of supply of gold must be introduced rather than e-way bill facility. They also suggested that e-invoice for gold can either be introduced based on a threshold of invoice or on the basis of transaction value for a particular transaction.

2.3 The officers from the State of West Bengal had similar reservations related to security concerns in case of recording of information in e-way bill for movement of Gold. They also added that the proposal of Kerala with regard to furnishing information only in Part A of E-way bill declaration needs in-depth examination.

2.4. The officers from the State of Gujarat further suggested that reverse charge mechanism (RCM) must be introduced on purchase of old gold from unregistered person. At present, there is no provision of reverse charge (RCM) on purchase of old gold from unregistered person in the GST Act. However, such a provision was there in erstwhile VAT Act of several States. It was suggested that the

same provision should be also included in GST as the same will compel taxpayers to record transactions of purchase of old gold from unregistered persons.

2.5 The officers from State of Kerala welcomed the proposal of State of Gujarat of introducing e-invoicing in case of both intra state and inter-state supply as a measure in addition to e-way bill, for recording transactions in case of supply of gold.

2.6 The Commissioner, GST Policy Wing, mentioned that the implications of RCM levy on purchase of old gold in common households, who are selling/ bartering old gold, need to be examined. Officers of West Bengal supported this view. It was decided that issue of levy of reverse charge on any goods including gold needs to be examined in detail by the Fitment Committee.

2.7 Shri Amaresh Kumar, Additional Commissioner, GST Policy Wing, CBIC expressed his apprehension regarding ascertainment of the type of supply when the goods (gold) are in transit (i.e., whether the said supply is inter-state or intra-State) and whether the said supply has requirement of e-way bill or not. He also added that whenever any consignment of gold will be intercepted in transit by officers, there will be a dispute whether it is an intra-state or inter-state supply and whether e-way bill was required for such supply, which would lead to disputes in almost all such cases. The Commissioner, GST Policy Wing requested State of Kerala to give their comments on the said issue.

2.8 Thereafter, the Commissioner, GST Policy Wing, CBIC requested representatives of GSTN to examine in consultation with NIC, the feasibility of developing a system of implementing E-Way Bill to track such intra-state movement of gold and bring up a detailed proposal in next meeting of Committee of officers. The Officers from GSTN were requested to give their feedback regarding:

- Can e-way bill be generated only with Part-A for supplies made in case of gold for intra-state movements, within such states, if the state so desires, without need of Part-B.
- Can NIC develop of e way bill for different states, in case of supply of gold for intra-state movements, within such states, based on the threshold decided by the concerned State.

3. System such that different threshold limits can be set for generation The following action points emerged after the deliberations held in the second meeting of Committee of Officers, viz-a-viz, - 3.

A. GSTN to examine the feasibility of developing a system of implementing E-way bill to track movement of Gold in consultation with NIC and bring up a detailed proposal in this regard, in the next meeting of Committee of officers.

B. The issue of levy on reverse charge basis (RCM) on purchase of old gold from unregistered person to be referred to Fitment Committee for examination.

C. State of Kerala to furnish comments on the issue of ascertainment of type of supply (whether intra-State or inter-State) when the goods (gold consignment) are in transit and whether e-way bill was required for such supply.

4. The Committee of officers ended with vote of thanks from the Commissioner, GST Policy Wing and Special Commissioner, Kerala.

The date and time of next meeting shall be communicated separately.

Annexure - I

Sr. No.	Name (Smt./Shri)	Designation
1	Sh. Sanjay Mangal	Commissioner, GSTPW
2	Dr S. Karthikeyan	Special Commissioner, SGST, Kerala
3	Sh. Ridhesh Rawal	Deputy Commissioner, SGST, Gujarat
4	Sh. Rajib Sengupta	Joint. Commissioner, SGST, West Bengal
5	Sh. Ravneet Khurana	Special Commissioner, SGST, Punjab
6	Sh. M.S. Srikar	Commissioner, SGST, Karnataka
	Sh. Ravi	Joint Commissioner, SGST, Karnataka
7	Smt. Ashima Bansal	Joint Secretary, GSTC Secretariat
	Sh. Kshitendra Verma	Deputy Secretary, GSTC Secretariat
8	Sh. Dheeraj Rastogi	SVP (Services), GSTN
	Sh. Sarthak Saxena	OSD, GSTN

Annexure C

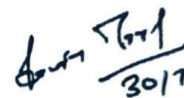
File No. CBEC-20/13/02/2020-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs
GST Policy Wing

Room No. 159-A, North Block
New Delhi, July, 2021

OFFICE MEMORANDUM

Subject: Record of Discussion of the 3rd Meeting of the Committee of Officers to examine the feasibility of implementation of E-Way Bill requirement for movement of gold and precious stones- reg.

This is in reference to the third meeting held on 06.07.2021 of the Committee of Officers to examine the feasibility of implementation of e-way bill requirement for movement of Gold and Precious Stones. The minutes of the said meeting are enclosed herewith.


30/7/2021

(Sanjay Mangal)
Pr. Commissioner (GST)
Email: sanjay.mangal@nic.in

To,

1. The Commissioner, Commercial Tax of the States of Bihar, Gujarat, Karnataka, Kerala, Punjab, West Bengal
2. The Joint Secretary, GST Council Secretariat.
3. The CEO, GSTN.
4. The SVP (Services), GSTN.
5. Deputy Director General, NIC

Encl: As above.

Minutes of the 3rd Meeting of the Committee of Officers to examine the feasibility of implementation of E- Way Bill requirement for movement of gold and precious stones held on 06.07.2021

The third meeting of the Committee of Officers, to examine the feasibility of implementation of E-Way Bill requirement for movement of gold and precious stones and all other possible solutions to plug in revenue gaps was held on 06.07.2021 through video conferencing. The list of the attendees is enclosed as Annexure – I.

2. At the outset, the Principal Commissioner, GST Policy Wing welcomed all the participants to the meeting and made the opening presentation on the issues involved and the gist of information / comments sent by GSTN (in co-ordination with NIC) and Kerala. He requested the Committee to deliberate the issues involved for finalizing recommendations of the Committee. He requested SVP, NIC to elaborate on the comments given by them on the technical feasibility of implementation of proposed system of generation of e-way bill for gold/ precious stones for intra-state movement.

2.1 The SVP, NIC informed that e-way bill portal will be in a position to permit E-way bill generation for intra-state movement of gold and precious stones (items with HSN of Chapter 71) by requiring only Part A to be filled, without requiring Part B of the e-way bill. He also informed that presently also, there is no bar on e-way bill portal for generation of e-way bill irrespective of the value/ quantity, and therefore, there will be no restriction on the portal for generation of e-way bills, if different threshold for value/ quantity are fixed by different states for intra-state movement of gold/ precious stones. He mentioned that such thresholds can be fixed by states through rules/ notifications and there is no requirement of any amendment on portal for the same.

2.2 The CCT, Kerala mentioned that the mandate given by GoM to the Committee of Officers was to find feasibility and modalities of implementation of e-way bill for intra-state movement of gold by individual states, as per proposal given by Kerala and also to examine all other possible solutions to plug the gap in the system. He added that enough discussions have been done by the Committee of Officers on the same and there is a need for early finalization of the recommendations of the Committee. He mentioned that their suggestion was that e-way bill generation for intra-state movement of gold/ precious stones should be made applicable within the state, if the state so desires and also the value limit/quantity limit for implementation of e-way bill for intra-state movement of gold/ precious stones can be determined by the state. He suggested that information in Part A of the e-way bill would be sufficient for intra-state movement of gold and there will be no requirement of filling details in Part B of e-way bill in such cases. He mentioned that as NIC has now confirmed that there are no technical issues in implementation of such system of generation of e-way bill for intra-state movement of gold precious metals, Committee of Officers should recommend the implementation of such a system to GoM, without any further delay.

2.3 The Chief Commissioner, State Tax, Gujarat supported Kerala's proposal. He, however, added that a minimum threshold value should be proposed by the Committee for e-way bill generation for intra-state movement of gold, and it should be left to States to decide any threshold value above the said proposed minimum threshold. He also suggested that in addition, there is also a need for implementation of e-invoicing for both intra-state and inter-state supply of gold, which can be implemented uniformly throughout the country, in addition to the proposed intra-state e-way bill system. He added that e-invoice for gold can either be implemented based on a threshold of aggregate turnover of the taxpayer or on the basis of transaction value for a particular transaction i.e. per invoice. He added that there is also need to consider the proposal for levy of GST on RCM basis on

old gold supplied by unregistered persons to gold dealers, so that such transaction of old gold can be duly recorded.

2.4 The Joint Commissioner, State Tax, West Bengal mentioned that there would be a requirement of amendment in e-way bill rules, if e-way bill for intra-state movement of gold is implemented. The Principal Commissioner, GST Policy Wing clarified that once a final decision in the matter of e-way bill for intra-state movement of gold is taken by GoM/ GST Council, the Law Committee can frame the necessary rules to implement the said decision.

2.5 The Principal Commissioner, GST Policy Wing mentioned that the issue of e-way bill for intra-state movement of gold has been deliberated quite a lot by the Committee, and now based on feedback given by NIC and GSTN, and as suggested by other members, the Committee may consider recommending to GoM the proposal of implementation of such system of generation of e-way bill for intra-state movement of gold/ precious metals by individual states, if they so desire, and only Part A of the e-way bill will be required to be filled in such cases. He agreed with the suggestion of Gujarat to have a minimum threshold value for such intra-state e-way bill for gold, above which the states can decide any value as per their requirements. He requested the Committee to deliberate on the same, so that it can also be recommended to GoM.

2.6 The Principal Commissioner, GST Policy also added that Kerala in their note has clarified that there will be no dispute in determination of any movement of gold/ precious metals as inter-state / intra-state, as the goods will be accompanied by manual challans/ invoices. He mentioned that however, before implementing such a system of intra-state e-way bill for gold/ precious states, states will have to keep in consideration need to address issues/ possibility of disputes involved in determination of such movements as intra-state/ inter-state. He mentioned that manual delivery challans/ invoices may not fully prevent misuse and evasion, as unscrupulous elements may carry fake challans/ invoices for inter-state movement and may not generate e-way bill, wherein actual movement may be intra-state only. Similarly, there may be cases where the goods for inter-state movement without e-way bill of genuine taxpayers are accompanied by genuine challans/ invoices for such movement, but tax officers may doubt authenticity of the same, suspecting such supply to be intra-state supply, requiring e-way bills, which may lead to disputes and harassment. He also added that inclusion of jewellery for generation of e-way bill may cause harassment to common citizens, who may be carrying such jewellery for personal purposes, like functions, marriages, etc.

2.7 The CCT Kerala, while appreciating the concern showed by Principal Commissioner, GST Policy, mentioned that implementation of e-way bill for movement of gold may not prevent all evasion, but will help in reducing the tax evasion to significant extent, as there will at least be some online declaration regarding the movement of gold, whereas presently there is no such online declaration. He added that inclusion/ exclusion of jewellery from the e-way bill requirement for intra-state movement should be left to the discretion of the states. He also welcomed the proposal of State of Gujarat of introducing e-invoicing in case of both intra state and inter-state supply based on a threshold of aggregate turnover, but added that the same should be a measure in addition to e-way bill, and not a replacement of e-way bill.

2.8 The Special Commissioner, State Tax, Bihar agreed with the proposal of e-way bill requirement for intra-state movement of gold/ precious stones, above a certain minimum threshold. He added that it should be left to the discretion to the states whether to implement e-way bill for intra-state movement of gold or not. He also added that while implementing the same, the states will keep in consideration any harassment caused to genuine taxpayers and common citizens. The Additional

Commissioner, State Tax, Karnataka mentioned that a provision for e-way bill for gold was there in the erstwhile VAT Act in Karnataka and traders, jewellery houses, exporters etc. never resisted e-way bill requirement because this made their transactions transparent and legal.

2.9 The Special Commissioner, State Tax, Punjab supported the proposal of Kerala for implementation of e-way bill for intra-state movement of gold. He added that states will be responsive and vigilant against any harassment of the genuine taxpayers. He mentioned while the discretion to decide the threshold should be given to the states, agreeing with the suggestion of Gujarat, he suggested that a minimum threshold value should be decided by the committee for implementation of e-way bill for intra-state movement of gold, above which any amount can be decided by the states based on local requirements. He requested CCT Kerala to shed some light on such minimum threshold.

2.10 The CCT Kerala mentioned that presently, the minimum threshold for generation of e-way bill for intra state movement of gold being deliberated is between Rs 3 lakhs to 5 lakhs. Principal Commissioner, GST Policy Wing suggested that based on Kerala's estimation of Rs 3 lakhs to 5 lakhs, the minimum threshold for generation of e-way bill for intra-state movement of gold can be considered as Rs. 2 lakhs. This was agreed to by all the members of the Committee of Officers. It was also decided that since under Rule 138 (14) (d) of the CGST Rules, 2017, in respect of intra-state e-way bill, the State Tax Commissioners have been empowered to decide upon exemptions within the State, in consultation with the jurisdictional Principal Chief Commissioner/ Chief Commissioner of Central Tax, in the case of e-way bill for gold/ precious stones also, such a procedure will be followed for taking a decision in the state about implementation of such a system as well as threshold value to be adopted.

3. The Principal Commissioner, GST Policy then took up the proposal of Gujarat regarding the feasibility of e-invoice for gold and precious stones. He stated presently, the threshold turnover for generation of e-invoices for B2B transactions is Rs 50 crore. He also mentioned that making e-invoices mandatory based on value of a particular transaction, irrespective of turnover of the taxpayer, may adversely affect smaller taxpayers, as there may be a few transactions involving higher value for such smaller taxpayers, which will necessitate them to have technical capability for generation of e-invoice. It will be difficult to implement practically and may have operational challenges. Instead, the possibility of reduction of threshold turnover limit for generation of e-invoice for taxpayers dealing in gold/ precious stones needs to be explored. He also added that views of GSTN/ NIC also need to be taken about technical feasibility of implementation of such a system on portal, before going for such reduction of threshold turnover for e-invoicing for gold/ precious stones.

3.1 The Special Commissioner, State Tax, Punjab enquired whether the issue of e-invoicing was recommended by the GoM to Committee of Officers. Principal Commissioner, GST informed that in para 8 of the minutes of 2nd meeting of GoM held on 14th August, 2020, GoM recommended to examine the feasibility of system proposed by Kerala and all other possible solutions to plug the gap in the system. Therefore, the Committee may like to deliberate on the proposal of Gujarat regarding e-invoice for gold, as one of the modus operandi to plug the gaps in the system.

3.2 Sh. PV Bhatt, SVP, NIC informed the committee that presently e-invoice has been implemented for taxpayers having aggregate turnover above 50 crores and on B-2-B transactions only and not on B-2-C transactions. He further stated that before commenting anything on the feasibility of e-invoice system for a particular commodity, they need to examine the matter based on data of number of taxpayers involved in gold transactions, their registration details and number of

transactions, etc. Only after detailed examination, they can give their feedback about the feasibility of e-invoice system for a particular commodity.

3.3 After detailed discussions, it was decided by the Committee that e-invoice generation for gold/ precious stones should be on the basis of threshold limit of aggregate turnover and that a threshold limit of Rs 20 crore for generation of e-invoice for gold/ precious stones may be considered for recommending to GoM at this stage. Besides, GSTN & NIC may be requested to examine the feasibility of it, and once the modalities of this system and the timeline for implementation is worked out by GSTN & NIC, then the same can be implemented.

4. On the proposal of Gujarat for RCM levy on purchase of gold from unregistered persons, Principal Commissioner, GST Policy Wing, mentioned that it has already been decided by the Committee in 2nd meeting that the implications of RCM levy on purchase of old gold on the common households, who are selling / bartering old gold, need to be examined in detail by the Fitment Committee and hence, it may be recommended to the GoM to refer the same to the Fitment Committee. All the officers agreed to the same.

5. Finally, The Committee of Officers agreed unanimously to make the following recommendations to the GoM:

A. The states should be allowed to impose requirement of e-way bill for intra-state movement of gold/ precious stones within their states, if they so want. There will be a minimum threshold of Rs 2 Lakh, above which the states can decide any amount as threshold for generation of E-way bill for intra-state movement of gold/ precious stones in their state. Only Part 'A' on the -way bill will be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill. Further modalities of generation of e-way bill for intra-state movement of gold/ precious stones will be as suggested by NIC/ GSTN.

B. E-invoicing should be made mandatory for B2B transaction by all taxpayers supplying gold/ precious stones (goods of HSN 71) above aggregate turnover of Rs 20 crore. GSTN in consultation with NIC to examine the feasibility of implementation of the proposed requirement of e-invoicing for gold/ precious stones by taxpayers above aggregate turnover above Rs 20 crore and to give a detailed proposal on the modalities of the same and timelines for the implementation of the same.

C. The issue of levy on reverse charge basis (RCM) on purchase of old gold from unregistered persons may be referred to Fitment Committee for detailed examination.

6. The 3rd meeting of Committee of Officers ended with vote of thanks from the Principal Commissioner.

Annexure-I

**MoM-3rd meeting of the CoO-E-way Bill requirement for
movement of Gold-Dated 06.07.2021**

Sr.No.	Name(Smt./Shri)	Designation
1.	Sh.Sanjay Mangal	Principal Commissioner, GSTPW
2.	Sh.J.P. Gupta	Chief Commissioner, State Tax, Gujarat
3.	Sh. Anand Singh Dr S. Karthikeyan	Commissioner, State Tax, Kerala Special Commissioner,State Tax, Kerala
4.	Sh.Arun Mishra	Special Secretary, Commercial Taxes, Bihar
5.	Sh. Ravneet Khurana	Special Commissioner, State Tax, Punjab
6.	Sh. Rajib Sengupta	Joint Commissioner, State Tax, West Bengal
7.	Dr.Ravi Prasad	Joint Commissioner, State Tax, Karnataka
8.	Smt. Ashima Bansal	Joint Secretary, GSTC Secretariat
9.	Sh.P.V. Bhat	Deputy Director General, NIC

Proposal note on Implementation of E-Way Bill generation for Gold/Gold Jewellery or Precious Stones

1. During discussion of the 2nd Meeting held on 18.02.2021, the Committee of Officers decided to examine the feasibility of implementation of E- Way Bill requirement for movement of gold and precious stones.
2. In the above said meeting minutes issued vide File No. CBEC-20/13/02/2020-GST/713-21 dt 08.04.2021, the Commissioner, GST Policy Wing, CBIC asked representatives of GSTN to examine in consultation with NIC, the feasibility of developing a system of implementing E-Way Bill to track such intra-state movement of gold and bring up a detailed proposal in next meeting of Committee of officers.
3. The Officers from GSTN were also requested to give their feedback regarding:
 - Can e-way bill be generated only with Part-A for supplies made in case of gold for intra state movements, within such states, if the state so desires, without need of Part-B.
 - Can NIC develop a system such that different threshold limits can be set for generation of e-way bill for different states, in case of supply of gold for intra-state movements, within such states, based on the threshold decided by the concerned State.
4. Based on the inputs given by NIC, for implementation of functionality in E-way Bill System, suggestion on the matter is as below:
 - a. For the said users, e-Waybill can be generated both by a registered person and by an unregistered person.
 - b. These users will enter the Part-A details of the e-waybill as usual. In such case, HSN codes of Chapter 71 need to be considered for generation of such e-way bills. Thus, Part-A details alone will be displayed to the users and can be filled up by them.
 - c. Thus, Part-B details are not needed to be filled in by the user for generation of E-way Bill for the commodity "Gold/Gold jewellery or Precious Stones"
 - d. In the Part-A screen, "Save" and "Generate E Way Bill buttons will be provided. On submission of Part-A details by clicking "Generate E Way Bill the e-way bill number will be generated. The Saved Part-A data will remain available for 15 days to the users to generate E Way Bill.

Note: However, for unregistered person 'Citizen e-Way bill can be used and only 'Generate EWB' will be provided to them (and no Save' option will be given to them as they don't have login facility).

- e. Presently the distance is auto calculated based on the PIN codes of source and destination. The same can be applied for these e-way bills also, as Part-A will have both source and destination. if distance is not available for entered PIN-code to PIN code, then validity of E-way bill can be made on the basis of the distance entered by the users.
- f. Users can cancel or reject these E way bills, once generated, as applicable in the present system. Extension of E-way bill can also be provided as applicable in the present system. B

- g. At present, no minimum threshold exists for generation of E-way bill and user can generate way bill as per the rules in that particular State/ UT. The same can be made applicable to this functionality also.
- h. The E Way Bills generated in Part-A, of such users need to be kept in the E-way bill System for reference and generation of reports, as per the procedure followed in the present system.

Following points are not considered in this note as inputs on the same is awaited:

- i. Inter-state transactions are not considered as of now as comments from Kerala are awaited. If inter-state e-way bills are not required and if someone is generating the e way bill for inter-state movement, the E-way Bill generation will be blocked, as of now.
- ii. The issue of levy on reverse charge basis (RCM) on purchase of old gold from unregistered person as the same has been referred to Fitment Committee for examination.

5. It is requested that above suggestions may be considered and for final comments along with time lines of its implementation in the EWB system may be sent to GSTN.



Agenda for 47th GST Council Meeting

28-29 June 2022

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Agenda Item 3 (Part-III) XVII : Proposal for continuing with exemption from IGST and Cess on imports/domestic procurement of goods by AA/EPCG/ EOU and for doing away with e-Wallet

To examine the issues faced by the exporters in GST and provide a probable solution to these issues, a Committee on Exports was constituted in the 21st meeting of the GST Council held on 09.09.2017. The report of the Committee on Exports was placed before the 22nd meeting of the GST Council held on 06.10.2017. In the said report, one of the issues identified was that of **working capital blockage**. With respect to the issue of working capital blockage, the Committee found that the holders of Advance Authorizations / EPCG / 100% EOUs earlier procured their inputs / capital goods etc. meant for export production duty free but now have to pay GST thereon. Likewise, merchant exporters earlier procured their goods for export free of central duties but they now have to pay GST. This had given rise to the problem of cash blockage, which was accentuated by the delay in refunds. The Committee had, accordingly, recommended the following two options for resolving the issue:

OPTION 1: Exemption on IGST and Cess on imports + Deemed export and nominal GST for supplies to merchant exporters

A. For exporters earlier working under Advance Authorization (AA) / Export Promotion Capital Goods (EPCG) / 100% EOU schemes

For procuring imported supply –Grant exemption from payment of IGST and Cess under Section 6 of IGST Act, 2017, read with Section 25 of the Customs Act, 1962.

For procuring domestic inward supply –

- i. Supplies against (i) AA/ Advance Release Order (ARO) holder, (ii) EPCG/ARO holder and (iii) EOU/ARO holder shall be notified as deemed exports u/s 147 of CGST/SGST Act and to allow refund of tax paid to the supplier of deemed export supplies;
- ii. A mechanism would be put in place whereby the exporter having AA / EPCG License or EOU status would identify the supplier from whom he would procure goods and ARO would be issued in the name of supplier;
- iii. The existing monitoring mechanism for exports under these schemes would continue;
- iv. In case of refund of IGST on such inter-state deemed export supplies, appropriate settlement mechanism would be required to be put in place.

B. For Merchant Exporters

- i. Supplies of goods for exports not requiring further processing to a registered exporter (registered with Export Promotion Council and Commodity Boards) shall be subject to payment of GST on reduced rate of 1% only;
- ii. Adequate safeguards such as requiring the export goods to be aggregated in identified export warehouses etc. shall need to be put in place to prevent leakages.

OPTION 2: e-Wallet:

It was envisaged that an e-Wallet would be created for exporters. A notional credit can be given in advance in this e-Wallet on the basis of the past export performance of exporters and they can use the balances in e-Wallet to discharge the tax liability upfront and then adjust the credit

against the refund payable to them. The notional credit in the e-Wallet is like an advance refund, with the restriction that this amount can only be used for payment of taxes and will get adjusted against final payment of refunds. The amount of credit in the e-Wallet can be fine-tuned depending on the ITC accumulation during the period being taken for processing of refunds. As and when the refunds become prompt, the balances required to be credited in the e-Wallet can be progressively reduced and ideally there should be no requirement for any such notional credit.

2. On the issues detailed above, the GST Council in its 22nd meeting had recommended:
 - i. To grant exemption from IGST, Cess, etc. under Section 6 of the IGST Act, 2017 read with Section 25 of the Customs Act, 1962 to import of goods for exporters availing the schemes of Advance Authorisation/Export Promotion Capital Goods/100% Export Oriented Units up to 31st March 2018 and to continue the existing monitoring schemes for exports;
 - ii. To notify domestic supplies of goods made to exporters as deemed exports under Section 147 of the CGST/SGST Acts, to allow payment of taxes by suppliers and to allow refund of tax so paid to supplier. An Advance Release Order (ARO) shall be issued in the name of domestic supplier by exporter having AA/EPCG or EOU status. This scheme shall be in place up to 31st March 2018. The existing monitoring mechanism for exports to continue;
 - iii. Supplies of goods to merchant exporters registered with Export Promotion Council / Commodity Boards shall be on payment of tax at the rate of 0.1% and to prevent misuse, adequate safeguards shall be provided;
 - iv. To make the e-Wallet scheme for exporters (make available to exporter a notional credit in advance on the basis of the past export performance) functional by 1st April, 2018.

3. However, the implementation of e-Wallet was deferred for 6 months till Oct 2018 in the 26th GST Council meeting due to the issues in implementation of e-Wallet. The extracts of the agenda placed before 26th GST Council meeting are:

“3. In order to implement e-Wallet, immediately after the Council’s decision to this effect on 06.10.2017, internal meetings with stakeholders such as DGFT and GSTN took place. Thereafter, GSTN floated a concept note on the subject which paved the ground for further discussion. Subsequently, on 16.12.2017, Union Finance Secretary constituted a Working Group with representatives of Central and State Governments to examine how to operationalize the e-Wallet scheme with effect from 1 April 2018. The Working Group is chaired by Chairman, GSTN. The Working Group has since been deliberating on the subject and the Union Finance Secretary too has from time to time reviewed the progress.

4. The Working Group has identified some of the challenges in implementing the e-Wallet scheme. Firstly, a firm commitment is necessary on the part of DGFT, Department of Commerce to take ownership of the scheme. Secondly, there are technical issues as the e-Wallet would rest on an independent IT platform but with strong linkages with GSTN on one side and Custom IT system on the other. The IT related changes in GSTN are of particular importance to make e-Wallet work. Thirdly, there are legal and administrative issues in determining the quantum of credit of virtual currency in e-Wallet, the transfer of credits from

the exporters to suppliers, accountal of subsequent exports, validation of entries in ledger etc. There would certainly be other issues which arise and would need to be resolved on the road to implementing e-Wallet.

5. Whereas the Working Group is examining the matter in its entirety, one finding that has emerged is that the complex issues to be resolved would require time. The Working Group is also sensitive to the fact that major IT changes are in the offing on account of the current discussions on a modified return mechanism. The introduction of electronic e-Way Bill with effect from 1 April 2018 is another factor. Also, on practical considerations the time is simply too short now to implement the e-Wallet scheme by 01.04.2018. Thus, the Working Group would need more time to complete its task."

4. Thereafter, the implementation of e-Wallet has been deferred repeatedly with the approval of GST Council till 31.03.2022. Further, based on the recommendations of the GIC, the same has been deferred till 30.06.2022.

5. The technical issues pertaining to e-wallet were examined by the Directorate General of Export Promotion (DGEP), CBIC. DGEP has observed that the scale of IT systems to implement the e-wallet would be huge and complex with numerous linkages between DGFT, GSTN, ICES, Customs, supporting manufacturers, BRC module etc. There would be further complexities in Return and Accounting system of payment etc. and **all these would add extra burden upon compliance requirement. Further, there would be complexity in settlement in case part payment is done through e-wallet and part through cash/ITC ledger.** The creation of 'virtual credit' in the e-wallets may be required to synchronise with the RBI regulations. Accordingly, after examination of the issue, DGEP has suggested to **discontinue the pursuing of e-wallet scheme and continuing the present exemption from IGST and Cess etc. on the imports/domestic procurement made under AA/EPCG/EOU schemes.**

6.1 In this regard, it is worth mentioning that the report of the Committee of Exports suggesting about e-wallet as detailed in para 1 above, was made when the grant of refund to exporters was not started or was in its inception stages. The situation has changed over past 4 years and the process of refund has completely stabilized. Here it would be pertinent to mention that the IGST refunds i.e. the refund of tax paid on export of goods have been completely automated with no physical interface. In fact, as far as IGST refunds are concerned, the exporter is not even required to file any separate refund claim and shipping bill itself has been deemed to be an application for refund. Even the refund of unutilised ITC on account of exports are now being filed and processed online w.e.f. 26.09.2019 with an option to track the refund application made available to the taxpayer. **Therefore, it can be stated that the refunds under GST have fairly stabilised and streamlined, with exporters now being fairly acquainted with the refund processing under GST.**

6.2 It may be pertinent to note that the e-Wallet scheme was mainly suggested to get over the issue of capital blockage due to delay in GST refunds in the initial phases of implementation of GST. However, the same appears to be not relevant now as the issue of working capital blockage of exporters is being very well taken care of by exemption from tax/concessional rate available to AA/EPCG/AA license holders and merchant exporters and by faster refunds both under IGST route and as well as that pertaining to un-utilized input tax credit on account of zero-rated supply.

6.3 Further, as observed by the DGEP, the scale of IT systems to implement the e-Wallet would be huge and complex with numerous linkages between DGFT, GSTN, ICES, Customs, supporting manufacturers, BRC module etc. There would be further complexities in Return and Accounting system of payment etc. and all these would add extra burden upon compliance requirement. In addition to the technical complexities as mentioned above, the proposal of e-Wallet scheme may also require major amendment in GST Laws and Customs Act for allowing payment of tax, on import as well as for domestic procurement, through e-token/virtual credit.

7.1 In view of the above, an agenda was placed before the Law Committee on 18.11.2021 to take decision on the following policy issues pertaining to e-Wallet:

- i. The process and framework of e-wallet system under GST, Customs Law and DGFT Policy.
- ii. Legal back up of the scripts /e-token to be assigned to the exports/ or whether it would be the actual money.
- iii. Whether exemption notification will be required for allowing payment of tax through e-token/virtual credit.
- iv. A business process document defining the processes at DGFT, Customs, GST Systems and taxpayer integration and process of utilizing, reconciling & validating tax forgone.

Or

To discontinue the pursuing of e-wallet scheme and continue with the present exemption from IGST and Cess etc. on the imports made under AA/EPCG/EOU schemes and procurement at concessional rate for merchant exporters.

7.2 Accordingly, the Law Committee in its meeting held on 18.11.2021 observed that the present refund mechanism to exporters have been stabilised and streamlined. Accordingly, Law Committee recommended that the present Notifications exempting IGST and Cess etc. on the imports made under AA/EPCG/EOU schemes may be continued and E-wallet scheme may not be pursued further.

8. The recommendations of the Law Committee is placed before the GST Council for deliberation and approval please.

Agenda Item 3 (Part-III) XVIII : Amendment in CGST Rules for handling of pending IGST refund claims

As per sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (in short “IGST Act”), a registered person making zero rated supply is eligible to claim refund either by making supply under bond or LUT, without payment of integrated tax and claim refund of unutilized ITC as per clause (a) of section 16(3) of the IGST Act, or alternatively, he can supply on payment of integrated tax and claim refund of such tax paid as per clause (b) of section 16(3) of the IGST Act. Refund of unutilized ITC on account of zero-rated supply without payment of duty under bond/ LUT as per section 16(3)(a), as well as refund of IGST paid on zero rated supply of services as per section 16(3)(b) of IGST Act, is required to be filed in **FORM RFD-01** under rule 89 of the Central Goods and Services Tax Rules, 2017 (in short “CGST Rules”), and such refunds are processed by the jurisdictional tax officers. However, as regard the refund of integrated tax paid on account of export of goods under provisions of section 16(3)(b) of the IGST Act, such refunds are processed by the Customs officers of the port of export, as per provisions of rule 96 of the CGST Rules. As per the provisions of sub-rule (1) of rule 96 of the CGST Rules, the shipping bill filed by the exporter shall be deemed to be an application for refund of IGST paid on the goods exported. Further, as per the provisions of sub-rule (3) of rule 96, the proper officer of customs shall process the claim of refund in case of export of goods. Sub-rule (3) of rule 96 of the CGST Rules is reproduced below, as under:

*“(3) Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or **FORM GSTR-3B**, as the case may be from the common portal, the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.*

2. The processing of IGST refunds under section 16(3)(b) of IGST Act is a system-based process, and the refund claims through this route are processed with least intervention and delay. However, there are number of cases where IGST refunds could not be processed *inter-alia* due to one or more of the following reasons:

- i. Claims suspended/withheld due to the exporter being identified as risky exporter
- ii. Claims suspended/withheld under clause (b) of rule 96(4) of CGST Rules due to violation of provisions of Customs Act
- iii. Refunds withheld under clause (a) of rule 96(4) of CGST Rules which could not be transmitted to jurisdictional GST Commissionerate due to lack of functionality on the portal.

3. In respect of cases withheld for the reasons stated at 2 (i) above, i.e. where claims are suspended/withheld due to the exporter being identified as risky exporter, it is mentioned that such risky exporters are identified based on various risk parameters, as per detailed data analytics and machine learning and in respect of such identified exporters, IGST refund is kept on hold on Customs system pending detailed verification of their credentials (including availment and utilization of ITC) to safeguard the interest of revenue. It may be desirable that detailed examination of such refund claims is made by jurisdictional GST officers by checking details of input tax credit availment and other details as per the returns and other relevant records of the exporter, which are not available to the

Customs officers. Further, based on such detailed verification, it may be found that the refund is either totally not admissible or some partial amount is not found to be admissible for refund. In all such cases, the proper officer of customs is not in a position to process the refund claim as the proper officer of customs can only sanction the IGST amount, in full, to the exporter and he has no authority or basis to reject the claim, in full or in part. There is also no mechanism available presently to transmit such cases to the jurisdictional GST authorities so that these refund claims can be decided by the jurisdictional proper officer following the principles of natural justice.

3.1 Further, in cases where the claim has been withheld for the reason stated at 2 (ii) above i.e., claims withheld as per clause (b) of rule 96 (4) of the CGST Rules on account of violation of provisions of the Customs Act, 1962, the proper officer of customs/customs authorities can conduct inquiry under the provisions of Customs Act, 1962 and rules made there under and can determine whether there is a violation of provisions of Customs Act or not, after adjudication of the matter under Customs Act. The same may have a consequential impact on IGST refund and the IGST refund may be either fully or partially be inadmissible. However, proper officer of customs/customs authorities has no power to issue a notice to the applicant under CGST Act and they have been given a limited role of proper officer to sanction refund of IGST paid on export of goods. Therefore, it appears that in respect of the refund claims withheld under clause (b) of rule 96(4), if after completion of proceedings under Customs Act, it is determined that there is contravention of provisions of Customs Act, which may have an impact on the IGST refund also, then such cases also need to be transferred to jurisdictional GST authorities. These refund claim can then be decided by the jurisdictional proper officer after following the principles of natural justice.

4. In this regard, it would be pertinent to refer to the provisions of sub-rule (4) of rule 96 which provides for withholding of IGST refunds under two situations. Sub-rule (5) provides for intimation of such withholding of their fund claims, withheld under first clause i.e. clause (a) of sub-rule (4) of rule 96, to the jurisdictional GST authorities as well as the applicant, online through common portal. Sub-rule (4) & (5) of rule 96 of the CGST Rules, 2017 are reproduced below, as under:

(4) The claim for refund shall be withheld where, -

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(5) Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.”

5. Further, it is observed that sub-rule (4) of rule 96 presently does not cover withholding of IGST refund cases where the IGST refund claims are being kept on hold in respect of the exporters identified as risky, based on various risk parameters as per detailed data analytics and machine learning, as discussed in Para 3 above, for detailed verification of their credentials (including availment and utilization of ITC) before sanction of refund to safeguard the interest of revenue.

Therefore, it is proposed to amend sub-rule (4) of rule 96 to provide for withholding/suspension of IGST refund in such cases, covered in Para 3 above, where the exporter is identified as risky based on data analytics.

6. As already stated at para 3 & 4 above, cases which are withheld for the reasons stated in para 2 above, there might be cases where the refund may be required to be fully or partially rejected. As Customs Officers have no power to issue a notice to the applicant under CGST Act, these cases need to be transmitted to the jurisdictional GST authorities for taking decision about the admissibility of the said refund claims following the principles of natural justice. Therefore, it appears that the refund claims withheld for the reasons stated in para 2 above needs to be transferred to jurisdictional tax authorities for processing and disposal of such cases. In the present sub-rule (5) of rule 96, there is a provision for intimation to applicant and the jurisdictional Commissioner about a refund withheld in accordance with the provisions of clause (a) of sub-rule (4) only and also transmission of a copy of such intimation to the common portal. The said provision does not refer to the other clauses of sub-rule (4) of rule 96. Therefore, there is a need to have a specific provision to provide for mechanism of transmission of such refund claims withheld under clauses (a), (b) & proposed clause (c) of sub-rule (4). Therefore, it is proposed to **omit sub-rule(5) and insert new sub-rules to provide for transmission of all IGST refunds withheld in terms of sub-rule (4) to the jurisdictional proper officer electronically through common portal and an intimation regarding such transmission shall be sent to the exporter electronically through common portal.** Here it would be pertinent to mention that GSTN is in process of development of functionality for transmission of IGST refunds from Customs to jurisdictional GST authorities.

7. Also, once the provisions for transmission of such IGST refunds to the jurisdictional GST authorities electronically through common portal, in a system generated **FORM GST RFD-01**, would be inserted in the rules, there would be no requirement of the provisions relating to issuance of withholding order in respect of such transmitted claims as they would be dealt with, in accordance with the provisions of rule 89. Therefore, it is proposed to omit sub-rule (6) & (7) in rule 96 of the CGST Rules, 2017.

8. Further, it has also been observed that few IGST refunds are pending for processing by Customs due to mismatch in data furnished by the exporter regarding his exports in his Form GSTR-1 vis. a vis. details furnished in Shipping Bill/Bill of export. In such cases, refund claims are processed only when the concerned exporter has rectified the said mistake in either GSTR-1 or Shipping Bill. However, as per the present provisions of rule 96(1) of the CGST Rules, the Shipping Bill filed by an exporter of good is deemed to be an application for refund of integrated tax paid on the goods exported out of India subject to filing of Export General Manifest (EGM) and a valid return in **FORM GSTR-3B**. As the refund claims are pending due to mistake made by the exporter, in such cases, application of refund should not be deemed to have been filed till the time such mistakes are rectified by the exporter. Accordingly, **it is proposed that in such cases, Shipping Bill may be deemed to be an application of refund under sub-rule (1) of Rule 96 only when there are no mismatches in the data furnished in Shipping Bill and GSTR-1 by inserting a proviso in sub-rule (1) to this effect.**

9. In view of the above, an agenda regarding the same was placed before the Law Committee in its meeting held on 01.12.2021. Law Committee has recommended amendment in various provisions of the CGST Rules, as shown in **Annexure** to this note. Further, it was also recommended by the Law Committee that the proposed amendments may be carried out **retrospectively w.e.f. 01.07.2017.**

10. The agenda is placed before the GST Council for deliberation and approval of the recommendations of the Law Committee.

ANNEXURE

Proposal for amendment (in red) in Rule 96 of the CGST Rules, 2017 w.e.f. 01.07.2017.

I. Amendment in sub-rule (1):

“(1) The shipping bill filed by an exporter of good 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~~ **FORM GSTR-3B**, ~~as the case may be.~~*

Provided that where there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in FORM GSTR-1, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter.”

II. Amendment in sub-rule (4):

“(4) The claim for refund shall be withheld where,-

- (a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or*
- (b) the proper officer of Customs has reasons to believe that the goods were exported in violation of the provisions of the Customs Act, 1962; or*
- (c) ~~Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.~~*

III. Omission of sub-rule (5):

~~“(5) Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.”~~

IV. Insertion of sub- rule (5A), (5B) & (5C):

“(5A) Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and not withstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5B) Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962, then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and not withstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

*(5C) Application for refund in **FORM GST RFD-01** transmitted electronically through the common portal in terms of sub-rule (5A) & (5B) shall be dealt with in accordance with the provisions of rule 89.”*

V. Sub-rule (6) & (7) to be omitted:

~~*(6) Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in **Part A of FORM GST RFD-07**.*~~

~~*(7) Where the applicant becomes entitled to refund of the amount withheld under clause (a) of sub-rule (4), the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount bypassing an order in **FORM GST RFD-06** after passing an order for release of withheld refund in Part B of **FORM GST RFD-07**.*~~

Agenda Item 3 (Part-III) XIX : Errata – typographical errors and minor changes

1. In the Detailed Agenda Note- Volume-1, at page number 204-205, Agenda Item 3 (Part-I) X, the existing para 3.1 and 3.3 may be read as below: (*changes from existing para shown in red*)

“3.1 It has been noticed that a number of registered persons are not reporting the correct details of inter-State supplies made to unregistered persons, to registered person paying tax under section 10 of the CGST Act (composition taxable persons) and to UIN holders, as required to be declared in Table 3.2 of **FORM GSTR-3B**, under the notion that the taxable value of the same along with tax payable has already been reported in Table 3.1 of the said **FORM**. *In certain cases, it has also been noticed that the address of unregistered person was captured incorrectly by the supplier, especially those belonging to banking, insurance, finance, stock broking, telecom, digital payment facilitators, OTT platform services providers and E-commerce operators, leading to wrong declaration of Place of Supply (PoS) in both the invoices issued under section 31 of the CGST Act, as well as in Table 3.2 of **FORM GSTR-3B**.*

3.3 Accordingly, it is hereby advised that the registered persons making inter-State supplies -

(i) to the unregistered persons, shall also report the details of such supplies, **place of supply-wise**, in Table 3.2 of **FORM GSTR-3B** and Table 7B or Table 5 of **FORM GSTR-1**, as the case may be;

(ii) to the registered persons paying tax under section 10 of the SGST/CGST Act (composition taxable persons) and to UIN holders, shall also report the details of such supplies, **place of supply-wise**, in Table 3.2 of **FORM GSTR-3B** and Table 4A or 4C of **FORM GSTR-1**, as the case may be, as mandated by the law.

*(iii) shall update their customer database properly with correct State name and ensure that correct PoS is declared in the tax invoice and in Table 3.2 of **FORM GSTR-3B** while filing their return, so that tax reaches the Consumption State as per the principles of destination-based taxation system.”*

2. In the Detailed Agenda Note- Volume-2, at page number 14, Agenda Item 3 (Part-II) XVI, at 24th line, “01.02.2029” to be read as “01.02.2019”

Agenda Item 10 : Proposal to apportion IGST amount of Rs.27,000 crore for the financial year 2022-23 on ad hoc basis

Depending on the amount of IGST remaining unapportioned, provisional settlement is being done from time to time on an ad-hoc basis as per the provisions of sub-section (2A) of the Section 17 of the IGST Act, 2017, which reads as under:

17. Apportionment of tax and settlement of funds —

(2A). The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent. to the Central Government and fifty per cent. to the State Governments or the Union Territories, as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections.

It is estimated that as on 30th June, 2022, the unsettled IGST of Rs.27,000 crore approx. would be available in the Consolidated Fund of India under the IGST Head. The details are given in the table below: -

	IGST (Rs. In crore)			
Month	Cash Collection	Refund	Settlement	Net
April*	81,893.43	10,163.56	-60,385.09	11,344.78
May*	72,953.28	17,165.41	-51,046.25	4,741.62
June(projected)	73,000.00	10,000.00	-52,000.00	11,000.00
Total	2,27,846.71	37,328.97	-1,63,431.34	27,086.40

*(Source: Pr.CCA, CBIC)

Accordingly, it is proposed to apportion Rs.27,000 crore on ad-hoc basis, 50% to Centre and 50% to States/UTs. This will reduce the revenue gap of States/UTs and, therefore, the compensation required as well.

This agenda is placed before the GST Council for consideration and approval.

Agenda Item 11 : Agenda Note on amendments to provisions relating to GSTAT in CGST Act, 2017

1. GST Appellate Tribunal is constituted under Section 109 of the Central Goods and Services Tax Act, 2017 which provides for constitution of GST Appellate Tribunal as the second appellate authority within the GST framework. The process of original adjudication as well as the first appeal happens through individual officers under the Act but the second appeal against the orders of the first appellate authorities under Central as well as State tax administration lies with the GST Appellate Authority constituted under the CGST Act. GST Appellate Tribunal has been provided the responsibility to hear appeals under all the four GST laws passed by Central as well as State officers. Therefore, this is the first forum at which the adjudication process converges under all GST laws and all tax administrations.

Order of Madras High Court:

2. As per the provisions of CGST Act, 2017, each bench of the Tribunal is composed of one Judicial Member, one Technical Member (Centre) and one Technical Member (State). In its order dated 20.09.2019 in [WP 21147 of 2018 – Revenue Bar Association Vs. Union of India](#), Hon'ble High Court of Madras held that “*The number of expert members therefore cannot exceed the number of judicial members on the bench*” and struck down the relevant provisions of the law.

3. Accordingly, it is proposed to amend the CGST Act to provide that each Bench would consist of one Judicial Member and one Technical Member, who would be a Technical Member (Centre) or a Technical Member (State). While doing so, there is a need to ensure that number of Technical Members (Centre) and number of Technical Members (State) should be equal in every State and overall nationally. This can be easily achieved where the number of Benches are even. Where the number of Benches is odd, it can be provided that one bench would be filled by a Technical Member (Centre) and by a Technical Member (State) in an alternating manner.

4. While these exact details would come in the Rules, the law is proposed to be amended to provide that over a period of time, it should be ensured that adequate balance is maintained in number of appointments of Technical Member (Centre) and Technical Member (State) in every State. The exact details would be worked out and brought before GST Council after deliberating in the GST Law Committee to formulate the required rules.

5. In its order referred above, the Court also considered the question of lawyers not being eligible for appointment as Judicial Member. Hon'ble Court upheld the provision and recommended that the Parliament may consider including lawyers to be eligible for appointment as Judicial Members. This issue was discussed in the GST Council when the draft law was originally discussed in the Council and Council decided that at the initial stage, Judges of High Court and District Judges qualified to be appointed to be Judge of High Court could be made eligible for appointment as Judicial Member. It is proposed to keep the eligibility as the same in this regard.

Other amendments

6. Some other amendments have been proposed in the Law in line with judgements of Hon'ble Supreme Court in cases related to other Tribunals that are relevant to GSTAT as well.

Brief Background

7. Central Government acknowledged that a number of Tribunals exist under various laws and have different terms and conditions, method of appointment etc. With a view to bring uniformity and efficiency, Government amended around 30 laws to rationalize existing Tribunals and bring uniformity in conditions of service like tenure, retirement age, salary and allowances, method of appointment etc. These changes were originally brought through the Finance Act 2017 and [Tribunal](#).

[Appellate Tribunal and other Authorities \(Qualifications, Experience and other Conditions of Service of Members\) Rules, 2017.](#)

8. These Rules were challenged and were struck down by Hon'ble Supreme Court in its order dated 13.11.2019 in [CA No. 8588 of 2019 – Rojer Mathews Vs. Union of India](#). While doing so, the Apex Court laid down certain basic tenets to be followed and directed framing of fresh rules. Accordingly, [Tribunal, Appellate Tribunal and other Authorities \(Qualifications, Experience and other Conditions of Service of Members\) Rules, 2020](#) were brought in place. Tribunal Rules 2020 were also challenged and in its order dated 27.11.2020 in WP (C) 804 of 2020 – Madras Bar Association Vs. Union of India, Hon'ble Supreme Court of India directed certain changes to be brought in the Rules. Later, incorporating certain important aspects of the principles, Central Government promulgated the Tribunal Reforms Ordinance, 2021 that has now been replaced by the [Tribunal Reforms Act, 2021](#).

9. Consequent to the enactment of the GST Laws, GSTAT Rules, 2019 were issued by Central Government on recommendations of the Council, which have been challenged in WP No. 26762 of 2019 – Revenue Bar Association Vs UoI in Madras High Court as well as in WP No. 3247 of 2019 – Bhartiya Vitta Slahkar Samiti Vs UoI in Delhi High Court on the grounds that these Rules are against the principles laid down by the Apex Court with respect to Tribunals. In both cases, Government has taken a stand that since the relevant legal provisions itself have been struck down, and the relevant provisions including the Rules will be examined and revised after seeking recommendations of the GST Council.

10. Many of the amendments proposed here are in line with the orders of Hon'ble Supreme Court in Rojer Mathew case, the Madras Bar Association (2020) case and the provisions of the Tribunal Reforms Act, 2021 to bring the provisions relating to GSTAT in CGST Act in compliance with various orders of Hon'ble Supreme Court and to bring uniformity with various Tribunals under Tribunal Reforms Act, 2021.

Search cum Selection Committee (ScSC)

11. The composition of the Search-cum-Selection Committee has been a matter of litigation in various cases. Finally, in order dated 27.11.2020 in [WP \(C\) 804 of 2020 Madras Bar Association of India Vs. UOI](#), Apex Court has held that ScSC should be chaired by Chief Justice of India or a Judge of Supreme Court nominated by him and should consist of President of the Tribunal and two Secretaries to be nominated by Government. The Secretary of the concerned Administrative Department should be the Member Secretary in the Committee with no vote and the Chairperson of the Committee should have the casting vote.

12. In line with principles laid down in this judgement, it has been proposed that the ScSC for GSTAT should be chaired by Chief Justice of India or a Judge of Supreme Court nominated by him and the President of GSTAT shall be a Member of the ScSC. It is proposed that one Secretary to be nominated by Central Government and Chief Secretary of one State to be nominated by the Council should be Members of ScSC. Revenue Secretary would be the member Secretary without a vote and the Chairperson of the ScSC shall have casting vote.

13. Since the appointment has to be done on the recommendations of a ScSC head by Chief Justice or a Judge of Supreme Court nominated by him, the current structure of having National, Regional, State and Area Benches is no longer required and the law can be modified to provide for all Benches of same kind with a Principal Bench where the President sits.

Qualifications

14. In its order dated 11.05.2010 in [CA 3067 of 2004 – R Gandhi Vs. Union of India](#), Hon'ble Supreme Court held that “*Therefore, when the Legislature substitutes the Judges of High Court with*

members of Tribunal, the standards applicable should be as nearly as equal in the case of High Court Judges. That means, only Secretary level officer (that is those who were Secretaries or Additional Secretaries) with specialized knowledge and skills can be appointed as Technical Members of the Tribunal". Accordingly, the qualification for Technical Member (Centre) is proposed to be aligned to state experience of 25 years in Group A service in the Indian Revenue Service. Same requirement has been laid down for Technical Members (State) as officers who have worked in State Government and have spent 25 years in Group A posts and have experience in taxation and finance.

15. However, when this issue was discussed in GST Law Committee, it was argued that in some States, the entry level of direct recruitment is not at the level of Group A thereby leading to a situation that even the senior most officer may not have spent 25 years in Group A. To cater to this situation, a proviso is proposed to be added to allow the reduction of this period of 25 years with respect to any State through a notification, on the recommendation of the Council. The draft law also provides for a preference to officers of a State for appointment as Technical Member (State) to Benches in that State.

Terms and retirement age:

16. The terms and retirement age has been made uniform and aligned with what is there for all the Tribunals under the Tribunal Reforms Act, 2021 and with a clause providing for reappointment.

17. Some other amendments have been made to align with the above major changes. The draft amendments (shown in track change mode) has been annexed with this note for approval of the GST Council, subject to drafting changes.

Draft Amendments

109. Constitution of Appellate Tribunal and Benches thereof

(1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by ~~the National Bench and Benches constituted under sub-section (3) and sub-section (6). thereof (hereafter in this Chapter referred to as “Regional Benches”), State Bench and Benches thereof (hereafter in this Chapter referred to as “Area Benches”).~~

(3) The ~~National~~ Principal Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of ~~one~~ a Technical Member (Centre) ~~or and one~~ Technical Member (State).

~~(4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member and a one Technical Member (Centre) or and one Technical Member (State).~~

~~(5) The National Bench or Regional Benches of the Appellate Tribunal shall have~~ The jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply ~~shall lie only with the Principal Bench.~~

(6) In addition to the Principal Bench, Government shall, by notification, constitute such number of Benches at such locations as may be recommended by the Council, based on the request of the State Government, where applicable.

~~(6) The Government shall, by notification, specify for each State or Union territory a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as “State Bench”) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:~~

~~**Provided** that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:~~

~~**Provided** further that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.~~

(7) The ~~State Bench or Area~~ Benches, other than Principal Bench, shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5).

(8) The President ~~and the State President~~ shall, by general or special order, distribute the business or transfer cases among ~~Regional Benches or, as the case may be, Area Benches in a State.~~

(9) Each ~~State Bench and Area Benches~~ of the Appellate Tribunal shall consist of a Judicial Member ~~and a one~~ Technical Member (Centre) ~~or and one~~ Technical Member (State) ~~and the State Government may designate the senior most Judicial Member in a State as shall be the State President.~~

(9A) The senior most Judicial Member within such Benches as may be prescribed, shall act as the Vice President for such Benches and he shall exercise such powers of the President as may be prescribed but for all other purposes shall continue to be considered as a Member.

(10) ~~In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members.~~

~~Provided that any appeal w~~Where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single Member.

(11) If the Members of ~~the National Bench, Regional Benches, State Bench or Area Benches a Bench~~ differ in opinion on any point or points, ~~it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided,~~ they shall state the point or points on which they differ, and the case shall be referred by the President ~~or as the case may be, State President~~ for hearing on such point or points to ~~one or more of the~~ another Members ~~of the National Bench, Regional Benches, State Bench or Area Benches~~ from a Bench within the State or another State, if required, and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

(12) The Government, in consultation with the President may, for the administrative convenience, transfer ~~Members from one bench to the other.~~—

~~(a) — any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or~~

~~(b) — any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.~~

~~(13) — The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.~~

(14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc

(1) A person shall not be qualified for appointment as—

(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, ~~or is or has been a Judge of a High Court for a period not less than five years;~~

(b) a Judicial Member, unless he –

(i) has been a Judge of the High Court; or

(ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; ~~or~~

~~(iii) — is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years;~~

(c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least ~~fifteen~~ **twenty-five** years of service in Group A;

(d) a Technical Member (State) unless he is or has been an officer of the State Government ~~or an officer of the All India Service~~, not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank ~~being the highest rank below the Commissioner in the State tax department~~ as may be notified by the concerned State Government on the recommendations of the Council ~~and has completed twenty-five years of service in Group A~~ with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation:

Provided that the Government may, on the recommendations of the Council, by notification, reduce the requirement of completion of twenty-five years of service in Group A in respect of officers of such State where no person has completed twenty-five years of service in Group A, subject to such conditions, and till such period, as may be specified in the notification.

~~(2) — The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:~~

(2) The President, Judicial Members, the Technical Member (Centre) and Technical Member (State) shall be appointed by the Government on the recommendations of a search-cum-selection Committee constituted under sub-section (4):

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the ~~senior-most~~ Technical Member of the ~~National~~ Principal Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the ~~senior-most~~ Technical Member of the ~~National~~ Principal Bench shall discharge the functions of the President until the date on which the President resumes his duties.

(2A) While making selection for Technical Member (State), preference shall be given to officers who have worked in the State Government of the State to which the jurisdiction of the Bench extends.

~~(3) — The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.~~

~~(4) — The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High Court of the State or his nominee.~~

~~(5) — The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.~~

(3) In making appointments, the Government shall ensure that, over a period of time, there is adequate balance in the number of appointments as Technical Member (Centre) and number of appointments as Technical Member (State), overall, as well as, in every State in such manner as may be prescribed.

(4) The search-cum-selection Committee shall consist of—

(a) the Chief Justice of India or a Judge of Supreme Court nominated by him— Chairperson of the Committee;

(b) Secretary of the Central Government nominated by the Cabinet Secretary — Member;

(c) Chief Secretary of a State to be nominated by the Council — Member;

(d) one Member, who—

(i) in case of appointment of a President of a Tribunal, shall be the outgoing President of the Tribunal; or

(ii) in case of appointment of a Member of a Tribunal, shall be the sitting President of the Tribunal; or

(iii) in case of the President of the Tribunal seeking re-appointment or where the outgoing President is unavailable or the removal of the President is being considered, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India; and

(e) Secretary of the Department of Revenue in the Ministry of Finance of the Central Government — Member Secretary.

(5) The Chairperson shall have the casting vote and the Member Secretary shall not have a vote.

(5A) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Committee shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be.

(6) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the ~~search-cum~~-selection Committee.

~~(7) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.~~

(8) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, ~~The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed, and allowances and other terms and conditions of service shall be same as applicable to Central Government Officers carrying the same pay:~~

Provided that neither salary and allowances nor other terms and conditions of service of the President, ~~State President~~ or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment:

Provided further that, if the President or Member takes a house on rent, he may be reimbursed a house rent higher than the house rent allowance as are admissible to a Central

Government officer holding the post carrying the same pay, subject to such limitations and conditions as may be prescribed.

(9) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, ~~the~~ President of the Appellate Tribunal shall hold office for a term of ~~three~~ four years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for re-appointment.

~~(10) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty five years, whichever is earlier and shall be eligible for re-appointment.~~

(11) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, ~~The State President,~~ Judicial Member, Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of ~~five~~ four years from the date on which he enters upon his office, or until he attains the age of sixty-~~five~~ seven years, whichever is earlier and shall be eligible for re-appointment.

(12) The President, ~~State President~~ or any Member may, by notice in writing under his hand addressed to the ~~Central~~ Government ~~or, as the case may be, the State Government~~ resign from his office:

Provided that the President, ~~State President~~ or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the ~~Central~~ Government, ~~or, as the case may be, the State Government~~ or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(13) The Government may, ~~on the recommendation of the search-cum-selection Committee, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench, Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may~~ remove from the office ~~such the~~ President or a Member, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, ~~in the opinion of the such Government~~ involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President, ~~State President~~ or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, ~~State President~~ or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, ~~State President~~ or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

~~(14) Without prejudice to the provisions of sub-section (13),—~~

~~(a) the President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be~~

~~removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard;~~

~~(b) — the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.~~

(15) The Government, on the recommendations of the search-cum-selection Committee ~~with the concurrence of the Chief Justice of India~~, may suspend from office, the President or a Judicial or Technical Members in respect of whom proceedings have been initiated under sub-section (13) ~~of the National Bench or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches~~ reference has been made to the Judge of the Supreme Court under sub-section (14).

~~(16) — The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (14).~~

(17) Subject to the provisions of article 220 of the Constitution, the President, ~~State President~~ or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the ~~National Principal Bench or the and the Regional Benches or the State Bench and the Area Benches thereof~~ where he was the President or, as the case may be, a Member.

114. Financial and administrative powers of President

The President shall exercise such financial and administrative powers over the ~~National Bench and Regional Benches~~ of the Appellate Tribunal as may be prescribed.

~~Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.~~

[As in the SGST Acts]

114. Financial and administrative powers of State President

~~The State President shall exercise such financial and administrative powers over the State Bench and Area Benches of the Appellate Tribunal as may be prescribed:~~

~~Provided that the State President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the State Bench and Area Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the State President.~~

Agenda Item 12: Ad-hoc Exemption Order(s) issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information

1. 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 orders issued are as follows:

Sr. No.	Order No.	Date	Remarks
1	AEO No. 12 of 2021	8 th September 2021	Request from Shri Amit Ramtekkar, for exemption from import duties on import of life saving drug Zolgensma for personal use.
2	AEO No. 13 of 2021	10 th September 2021	Request from Smt. Fathimath Shakkira PPM, for exemption from import duties on import of life saving drug Zolgensma for personal use.
3	AEO No. 14 of 2021	15 th September 2021	Request from Ministry of Defence, for exemption of Customs duty for import of T-56 Rifles from Sri Lanka.
4	AEO No. 15 of 2021	25 th October 2021	ATA Courses-IN 18 DFEG01, "Digital Forensics Equipment Grant Consultation" Program-reg.
5	AEO No. 01 of 2022	17 th January 2022	Request for ad hoc exemption for respirator Non-surgical Mask N-95- & 4-Layer Masks shipped from Indiana Face Masks as donation by the Government of Karnataka-reg.

3. The Adhoc Exemption Orders are placed below for the information of the GST Council.

The above listed Ad hoc Exemption Orders are placed herewith:

1. For AEO No.12 of 2021 dated 08.09.2021

**F. No. 461/08/2021-Cus V
Ad-hoc Exemption Order no. 12 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 08th September 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. Amit Ramtekkar., father of baby Yuvaan Ramtekkar, 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, Yuvaan Ramtekkar, 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 Yuvaan Ramtekkar 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 Yuvaan Ramtekkar 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 07.03.2022

Yours faithfully,

(Komila Punia)
Deputy Secretary

Copy to:

- Mr. Amit Ramtekkar, Sara Metroville, Flat No. 703, B Wing Punawale Gaon, Pimpri Chinchwad, Pune, Maharastra-411033
- 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

2. For AEO No.13 of 2021 dated 10.09.2021

**F. No. 461/19/2021-Cus V
Ad-hoc Exemption Order no. 13 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 10th September 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 Ms. Fathimath Shakkira PPM, mother of baby Muhammad Qasim, 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:

- (vi) her son, Muhammad Qasim, 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.
- (vii) 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.
- (viii) they have obtained approval from DGCI to import this life saving medicine for personal use.
- (ix) the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 74.7ml of the drug would be required for the treatment.
- (x) The drug is expected to be imported as 1 package with 74.7ml 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 74.7ml 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 Qasim 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 Muhammad Qasim 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 09.03.2021

Yours faithfully,

(Bullo Mamu)
Under Secretary

Copy to:

- Ms. Fathimath Shakkira PPM, Puthiyapurayil, 202, Peruvana, Kooveri, Thaliparambu House, Mattool Central P O Mattool 670581, Kannur, Kerala
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.

(Bullo Mamu)
Under Secretary

3. For AEO No.14 of 2021 dated 15.09.2021

**F. No. 463/02/2021-Cus V
Ad-hoc Exemption Order no. 14 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: 15 September, 2021

To

The Chief Commissioner of Customs and Central Goods & Service Tax
Hyderabad Zone

Subject: Request for exemption of Customs duty for import of T-56 Rifles from Sri Lanka-regarding.

Madam,

Ministry of Defence, Government of India, *vide* its letter No. A/95027/Sri Lanka/DCO dated 27.08.2021 (copy enclosed), has informed that Twelve T-56 Rifles (non-functional) of Sri Lankan Army have been approved for importation in India.

2. It has been further informed that -

(a) Indian Army has developed an ingenious capability of manufacturing simulators to cater to its training requirements. Simulator Development Division (SDD), Secunderabad manufactures the simulators for Indian Army.

(b) During the 6th Annual Defence dialogue held between India and Sri Lanka on 08.04.2019, Sri Lankan Army had requested for procurement of simulators from India. Accordingly, one fully operational IWTS (Infantry Weapon Training Simulator) is to be transhipped and installed in Sri Lanka by first week of October 2021.

(c) The Twelve T-56 Rifles received from Sri Lanka will be suitably modified and incorporated in the IWTS simulator prior to handing over of fully functional IWTS simulators to Sri Lankan Army.

(d) The cost of these twelve T-56 Rifles is approximately Rs. 1 Lakh.

3. Ministry of Defence has requested for duty free customs clearance of the said Twelve T-56 Rifles (non-functional).

4. 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, being satisfied that it is necessary in the national interest so to do, hereby exempts the said goods, i.e. Twelve T-56 Rifles (non-functional), 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 Integrated Tax leviable thereon under sub-section (7) of Section 3 of the said Customs Tariff Act, subject to the condition that the imported goods will be incorporated in the IWTS simulator at Simulator Development Division (SDD), Secunderabad and thereafter the said IWTS simulator will be supplied to Sri Lanka.

5. An undertaking that the goods covered by this Order will be used solely for the purpose of incorporation in the IWTS simulator at Simulator Development Division (SDD), Secunderabad and thereafter be supplied to Sri Lanka 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.

6. Any infringement of conditions of this Order would entail further necessary action by the jurisdictional Commissioner of Customs of the port of import as per law including but not limited to realization of Customs duty on the subject goods, penal action for such violations, etc.

7. This order is valid for imports made up to 14.03.2022.

Yours faithfully,

Encl: as above
(Komila Punia)
Deputy Secretary
Telephone-011-23093380

Copy to:

- Shri Vikram Singh Bora, Lt Col, GSO-1, DCD (A) for VCOAS, Room No. 224B, South Block, New Delhi -110001
- The 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

4. For AEO No.15 of 2021 dated 25.10.2021

F. No. 462/10/2020-Cus V
Ad-hoc Exemption Order no. 15 of 2021
Issued under section 25(2) of the Customs Act, 1962
Government of India
Ministry of Finance
Department of Revenue

Room no. 49, North Block, New Delhi – 110001

Dated the 25th October 2021

To,
The Principal Commissioner of Customs ACC (Import),
New Custom House, Near I.G.I. Airport,
New Delhi-110037

Sir,

Subject: ATA Course-IN 18 DFEG01, “Digital Forensics Equipment Grant Consultation” Program – reg.

The undersigned is directed to refer to a request received from Bureau of Police Research & Development (BPR&D) for seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for the equipment received on gratis basis for setting up a Cyber Lab at CAPT Bhopal from the United States of America.

2. It has been informed that:

- i. Bureau of Police Research & Development is conducting 11 ATA Courses for the calendar year 2021-22. Out of these 11 courses, 6 courses require various types of equipment to be brought by US side. The ATA Courses are a regular exercise of BPR&D in collaboration with the United States of America.
- ii. The cost of equipment has been informed as Rs. 7,05,19,918.23 i.e. Rupees seven crore five lakh nineteen thousand nine hundred eighteen and Paise twenty-three only.
- iii. The training program is conducted by BPR&D by looking into the growing need of the country to strengthen the Indian Police Forces to meet the formidable challenge from terrorists and disruptive elements in criminal matters. The participants of the program exchange best practices and increase cooperation with Indian Law enforcement to investigate and respond to terrorist incidents.

2.1 Bureau of Police Research & Development has requested for waiving off the customs duties and GST for the imported equipment received on gratis basis for setting up a Cyber Lab at CAPT Bhopal.

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 equipment for setting up a Cyber Lab at CAPT Bhopal, as per Annexure, from the whole of the duty of Customs

leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and, 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:

- a. shall be used only for the purpose for which they are being imported;
- b. shall not be put to any commercial use;
- c. shall not be sold, gifted, disposed of or used in any manner other than that specified in this order, without prior permission of the Central Board of Indirect Taxes and Customs; and
- d. shall be open for inspection by the Officer of Customs.

4. An undertaking to comply with the conditions mentioned in Para 3 above 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 immediate 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 24.04.2022

Yours faithfully,

(Komila Punia)

Deputy Secretary to the Govt. of India

Enclosed: Annexure

Copy to:

- Shri D S Sandhu, Assistant Director (Trg. /FC), Bureau of Police Research & Development, New Delhi 110037.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.

Yours faithfully,

(Komila Punia)

Deputy Secretary to the Govt. of India

5. For AEO No.01 of 2022 dated 17.01.2022

F. No. 461/29/2021-Cus V
Ad-hoc Exemption Order no. 01 of 2022
Issued under section 25(2) of the Customs Act, 1962
Government of India
Ministry of Finance
Department of Revenue

Room no. 49, North Block, New Delhi – 110001

Dated the 17th January 2022

To,
The Chief Commissioner of Customs
Bengaluru Zone

Sir,

Subject: Request for Ad hoc exemption for Respirator Non-surgical Mask N-95- & 4-layer Masks shipped from Indiana Face masks as donation by the Government of Karnataka-reg.

The undersigned is directed to refer to a request received from the Chief Secretary, Government of Karnataka for seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for the goods received as humanitarian aid from M/s Indiana Economic Development Corp. USA.

2. It has been informed that:
- i. Government of Karnataka is in receipt of A105 Respirator Non-Surgical N 95, 4-layer Masks (totalling 1,01,134 units) and IFM-SM3 Respirator Non-Surgical (totalling 2,40,000 units) from M/s Indiana Economic Development Corp. USA as donation.
 - ii. The value of the goods has been informed as Rs. 1,13,91,729.73 i.e. Rupees one crore thirteen lakh ninety one thousand seven hundred twenty nine Rupees and Paisa seventy-three only.
 - iii. The goods will be used for free treatment of Covid-19 patients in Government Hospitals

2.1 The Chief Secretary, Government of Karnataka has requested for waiving off the customs duties and GST for the above-mentioned imported goods received as humanitarian aid for combating the ongoing pandemic.

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 the subject goods (i.e. A105 Respirator Non-Surgical N 95, 4 layer Masks (totalling 1,01,134 units) and IFM-SM3 Respirator Non-Surgical Mask (totalling 2,40,000 units) for use in free treatment of Covid-19 patients in Government Hospitals, from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and, 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:

- a. shall be used only for the purpose for which they are being imported;

- b. shall not be put to any commercial use; and
 - c. shall not be sold, gifted, disposed of or used in any manner other than that specified in this order, without prior permission of the Central Board of Indirect Taxes and Customs.
4. An undertaking to comply with the conditions mentioned in Para 3 above shall be submitted 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 immediate 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 16.07.2022

Yours faithfully,

(Komila Punia)
Deputy Secretary to the Govt. of India

Copy to:

- The Chief Secretary, Government of Karnataka, Room No. 320, 3rd Floor, Vidhan Sabha Bengaluru-560 001.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.

Yours faithfully,

(Komila Punia)
Deputy Secretary to the Govt. of India

Agenda Item 13: Recommendations of the 16th IT Grievance Redressal Committee for approval/decision of the GST Council

1. The 16th meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 03rd March, 2022 at 03.00 PM to resolve the grievances of the taxpayers arising out of the technical problems faced by them on the GSTN portal in relation to GST Compliance filings.

The agenda for the 16th ITGRC meeting covered the following issues: -

1. Four cases of TRAN-1/TRAN-2 filing forwarded by Nodal Officer,
2. Sixteen cases of TRAN-1/TRAN-2 filing pertaining to Court cases,
3. Additional Agenda on legal issues (refund issues),
 - (i) M/s Futuristic Offshore Services & Chemical Limited,
 - (ii) M/s Alstone International.
4. (i) One day late fee waiver for August,2021 period for GSTR-3B late filing due to payment issues with RBI,
(ii) Reset of submitted GSTR-1 for M/s Vodafone Idea Ltd. (GSTIN:10AAACB2100P1ZC),
5. Technical Issues requiring data fixes by GSTN through back-end utilities.

2. Recommendations of ITGRC regarding TRAN-1/TRAN-2 cases forwarded by the Nodal officers and the courts cases:

The Committee decided to recommend that:

- (a) Out of the four (04) cases forwarded by the Nodal officers, the committee did not consider two cases on merit as these were received by the GSTN after the due date i.e. 31.08.2020 and recommended for rejection as being time barred,
- (b) The committee rejected the third case on merit and decided not to consider any case forwarded by the Nodal officers to GSTN after the due date i.e. 31.08.2020,
- (c) The fourth case was recommended by the committee to resubmit the details as the similar cases were allowed in the 6th and 9th ITGRC meetings,
- (d) Out of sixteen (16) cases which came through the court, committee considered five (05) cases falling under Category A1 on merit as the taxpayer faced the technical glitch and decided to recommend for opening the portal to those five taxpayers,
- (e) Regarding the remaining eleven (11) court cases, ITGRC observed that existence or non-existence of the technical glitch was a matter of fact and technical analysis confirmed that there existed no technical glitch in those eleven (11) cases. Accordingly, ITGRC decided that those 11 cases were liable to be rejected on merit.

3. Recommendations of ITGRC in legal issues (Refund issues):

(i) In the first case, ITGRC took note of the data fixes done by the GSTN and approved the same,

(ii) In the second case, ITGRC took note of the technical analysis done by GSTN and rejected the case on merit as the taxpayer did not face any technical glitch.

4. Recommendations of ITGRC in Return Module Cases:

(i) One day late fee waiver for August-2021 period GSTR-3B late filing due to payment issue with RBI:

The ITGRC confirmed that there was a technical glitch in that case and recommended for waiver of penalty and fine only.

(ii) Reset of submitted GSTR-1 for M/s Vodafone Idea Ltd. (GSTIN:10AAACB2100P1ZC):

The ITGRC approved the case without any precedent value (*as fait accompli*). Further, it was decided that return filing error was not a data fix and GSTN would not do it unless there was a demonstrated technical glitch and ITGRC had given its prior approval.

5. Recommendations of ITGRC on Data Fix issues (Technical issues requiring data fix of the processed incorrect data through backend utilities):

As per the SOP approved in the 15th ITGRC meeting, GSTN identified ten (10) cases which required data fix of the processed incorrect data through backend utilities.

The Committee observed that all the instances were technical data fixes as categorized by the approved SOP. The ITGRC then decided to take note of all the data fixes and unanimously approved them.

The recommendations of ITGRC as per attached Minutes of the 16th meeting of the ITGRC are placed for information of the GST Council as Annexure-A.

The GST Council may give its approval on:

- (a) the TRAN-1/TRAN-2 cases forwarded by Nodal officers and Court cases as discussed in para 2 above,
- (b) the legal issues (refund issues) as discussed in para 3 above,
- (c) technical issues as discussed in paras 4 & 5 above.

Annexure-A

Minutes of the 16th IT Grievance Redressal Committee (ITGRC) meeting dated 03.03.2022 held in online mode over WebEx Platform

1. The 16th meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 03rd March, 2022 at 03.00 PM. The list of officers who attended the meeting is attached as **Annexure-1**. The agenda circulated for the meeting is at **Annexure-2**.
2. Joint Secretary, GST Council Secretariat, welcomed all the members and gave a brief introduction that in the 16th ITGRC meeting, there were six (06) agenda points which includes TRAN-1/TRAN-2 cases from Nodal officers and court cases, data fixes issues and proposal for one-day late fee waiver for August, 2021 period for GSTR-3B late filing due to payment issues with RBI along with an Additional Agenda on legal issues. She then invited the Chairman, ITGRC for his opening remarks.
3. The Chairman welcomed all the members and informed that the 16th ITGRC meeting was being convened with six agenda points and requested the GSTN to present the agenda for the meeting.
4. Sh. Dheeraj Rastogi, Executive Vice President, GSTN made a power point presentation which is attached as **Annexure-3**.
- 4 (i). Firstly, EVP, GSTN presented the two cases (02) of TRAN-1 forwarded by Nodal officer of Maharashtra. He informed the committee that these two cases were received by GSTN on 21.09.2021 after the expiry of the due date for receipt of such cases. i.e., 31.08.2020. He summarized the two cases as under:

Sr. No.	GSTIN/ Provisional Id	Legal Name	Module	Date of receipt by GSTN	Jurisdiction	State
1	27AAACP2803P1Z9	Pradman Engineering Services P. Ltd.	Tran-1	21/09/2021	State	Maharashtra
2	27AAACK6569R1ZN	KAISER-E-HIND PVT. LTD	Tran-1	21/09/2021	State	Maharashtra

He further informed that GSTN has not done any technical analysis of these cases as they have been received post due date.

Brief Facts:

The Maharashtra state authorities had initially submitted the above cases in December 2019. However, the processing of cases had been deferred at that time as the representations from the jurisdictional officers were being received without complete information and/or proper recommendations. The representations were being forwarded by them without following the SOP and the instructions issued vide Circular No. 39/13/2018 dated 3/4/2018. In view of this, detailed instructions for forwarding the representations by jurisdictional Nodal Officers and processing by GSTN were issued vide GST Council's O.M. F. No. 71/Expansion-ITGRC/GSTC/2019/1512 dated 06.02.2020 and CBIC letter F. No. CBEC-20/10/16/2018-GST (Pt. I) dated 04.02.2020. An email id tran.extscope@gstn.org.in was also designated for sending cases to GSTN.

The instructions issued under the OM/Letter were also forwarded by GSTN individually to the State tax administrators/ Nodal officers, on 6th and 7th February 2020. They were informed that **Cases received from Nodal Officers after 31.03.2019 were not examined and were not put up before IT-GRC**. As per directions of competent authority, the Nodal Officer were requested to send all the pending representations of the taxpayers in the cases of non-filing/non-revision of TRAN-1/TRAN-2, which were not covered under the list of already approved / not approved cases. The processing of TRAN-1/ TRAN-2 representations, received from jurisdictional Nodal Officers, was re-started in February 2020 as per the directions of ITGRC issued in its 10th meeting, held on 22nd January 2020.

Observation & Recommendation:

The tax authority has re-submitted the cases for processing by GSTN on 21/09/2021, well after the extended due date of 31/08/2020. In view of the observations of the GST Council in 43rd Meeting, held on 28th May 2021, GSTN has already stopped processing of cases. Therefore, ITGRC decision was requested as regards further processing of these cases by GSTN.

Discussion:

The Chairman opined that the Committee should not consider the two cases clearly received after the time limit fixed by the GST Council. The CEO, GSTN endorsed the view of the Chairman as there wouldn't be an end to receiving such cases and stated that the Committee should not consider the cases which are received after 31.08.2020. He suggested that the issue may be placed before the GST Council that the ITGRC is not considering cases received after due date so that Council can ratify it. The CCT West Bengal and Pr. CC Delhi also endorsed this view. Thus, the ITGRC was of the view that the two cases received by GSTN after the time limit fixed by the GST Council i.e. 31.08.2020, should not be taken up by the ITGRC being time barred.

Decision:

The ITGRC did not consider these two cases on merit as these were received by the GSTN after the due date i.e. 31.08.2020 and recommended for rejection as being time barred.

4 (ii) Case sent by Nodal Officers of Centre:

The EVP, GSTN, then presented One more case (01) which was received before due date of 31/08/2020 by the jurisdictional officer and forwarded to GSTN in March 2021 but somehow it was lost in e-mail communication. Details of this case are as under:

(a). RADIANCE BIO SYN PVT LTD.-

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	27AACC R9743G1 Z3	RADIANCE BIO SYN PVT LTD	Pvt. Ltd. Co.	CGST -Rs. 1986338	Maharashtra	Ms. Kalyaneshwari Patil, Dy. Commr. State Tax	State	gstit.state@mahagst.gov.in

Brief Facts:

Party having GSTIN 27AACCR9743G1Z3 has filed TRAN-1 representation to the Maharashtra state which was received by them on 21.01.2020. In this case, it is informed by the GSTN that representation was missing ~~in~~ from the GSTN mail box. The case was forwarded to GSTN by State Nodal Officer in e-mail dated 09.03.2021 but it was not appearing in GSTN mail box i.e., tran.extscope@gstn.org.in. The state Nodal Officer again shared the missing mail with GSTN on 18.08.2021. Thereafter, the IT team of GSTN located the missing mail and recovered the mail on 18.09.2021.

Observation & Recommendation:

This case has been processed by GSTN and being presented for decision of ITGRC. Further, as per the technical analysis, TRAN-1 is successfully filed with no valid error report and falls under the category of B3.

Discussion:

The CEO, GSTN stated that the case was dispatched to GSTN by the nodal officer before 31.08.2021. Hence, the GSTN analysed the case technically and found it ineligible on merits being a B3 category case.

The Additional Secretary, DoR stated that the grievances received by the nodal officers before 31.08.2020 should be considered by ITGRC and the taxpayer should not suffer on account of some technical lapse on part of the department.

The Chairman explained that the process of TRAN-1 was a long drawn and extension of time has been given only to those who had availed the facility to apply on portal earlier and not for fresh cases. He further explained that the first two cases have been received by the GSTN after the due date. The third case was forwarded by the Nodal officer before the due date i.e., 31.08.2020 and it was not eligible on merit so it was liable to be rejected on merit.

In this context, the minutes of the 43rd GST Council held on 28.05.2021 were presented before the ITGRC where in Para 19.6 of the Minutes, the Council had decided that *“the due date was over on 31.08.2020 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 four (04) cases pending with GSTN to be taken up.”*

Thus, it was discussed that there has to be sunset clause. While the ITGRC can reject the third case on merit and for two cases and such other cases, the ITGRC would abide by the GST Council's decision in this regard. The Additional Secretary (GSTC) and the CCT (West Bengal) also concurred with the view.

Decision:

The ITGRC rejected this case on merit and decided not to consider any case forwarded by the Nodal officer to GSTN after the due date i.e. 31.08.2020.

Then EVP, GSTN presented the fourth case forwarded by the Nodal officer stating that this case was earlier approved by the ITGRC in the 5th meeting and the taxpayer again made the mistake. Details of the case are as under:

(b). M/s Shree Darshan Packagers Pvt. Ltd.

Brief Facts:

West Bengal Nodal Officer had forward the case of M/s Shree Darshan Packagers Pvt. Ltd. having GSTIN 19AADCS5359J1ZV to GSTN in Jan, 2019. This case was already taken up in 5th ITGRC meeting and approved. Consequently, the taxpayer filed form on 18.03.2019 but only balance of VAT Credit was updated in ITC Ledger and the balance of CENVAT could not be credited due to non-updating of registration details by the Taxpayer. Taxpayer reported to have unsuccessfully tried amending registration details in TRAN-1 by inserting Central Excise Registration Number on 29.05.2019.

The case was again forwarded to GSTN on 14.02.2020 for processing and to present in ITGRC but it was returned on 22.02.2020 as the case is already approved.

Further, the jurisdictional Nodal officer insisted to reprocess the case as similar cases were duly allowed on the ground of 6th and 9th ITGRC meeting.

Observation & Recommendation:

No particular observation was provided by GSTN in this case and requested the Members to deliberate the case and decide.

Discussion:

The Additional Secretary, DoR stated that the case was already taken up and approved in 5th ITGRC meeting and that there is no reason to disallow. He suggested to allow the taxpayer to file it again and consider the case for opening the portal. The Chairman also concurred with the view as such cases had been allowed earlier in the 6th and 9th ITGRC meeting and opined that it may be considered on merit and allow the taxpayer to re-submit the details as the case is already approved by the ITGRC.

Decision:

The 4th case was recommended for allowing the tax payer to resubmit the details as the similar cases were allowed in the 6th and 9th ITGRC meetings.

5. Court Cases:

The EVP, GSTN then presented sixteen (16) cases of TRAN-1/TRAN-2 which came through the court.

Category-wise analysis of Court cases of TRAN-1 and TRAN-2, 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 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 **05 cases** received as court cases are falling in this category.

Accordingly, 05 cases of TRAN-1 are being presented before 16th ITGRC for consideration and approval.

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 **07 case** received as court case is 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 case** 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 from Nodal officers and **02 cases** received as court case are 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 case** received as court case is falling in this category.

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	01	05	06
2	No specific order passed	02	05	07
3	Direction to Respondents/Nodal Officer to pass appropriate orders	01	00	01
4	Direction/Remedy to taxpayer to approach ITGRC/Nodal Officer.	01	01	02
	Total	05	11	16

5 (i). The EVP, GSTN first presented five (05) TRAN-1/TRAN-2 cases before the Committee wherein it was found post technical analysis that the taxpayer had faced the technical glitch while filing the TRAN-1/TRAN-2. The details of technical analysis of the five (05) cases are as under:

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 revised TRAN-1 but could not file because of errors.

i. WP(C) No. 2238 /2021 Delhi Wax Refinery V/s. UOI & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
07AAKPR8160N1ZY	Delhi	Proprietorship

Issue: Every time an attempt was made to save the uploaded data the system logged out the Petitioner/tax payer from the portal. Despite making several efforts the petitioner/tax payer was unable to log in to the portal as it repeatedly showed either a “Network Error” or the “Site cannot be reached”.

Status: GSTN is a party in this matter. GSTN vide email dated 3.09.2021 shared the comments in the matter and also 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 25.04.2022. No effective order is available on the Court’s website.

Technical Analysis: On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed as per the logs that the Petitioner/tax payer first time opened Form and tried to file, however while attempting to save/submit, the reported error was PE (Process with error) for invalid registration for VAT/CENVAT/SVAT No. AAKPR8160NEI002. This VAT/CENVAT has not been added in profile till date. ITC ledger not updated and ARN also not generated. Revision was also not attempted. From the above it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

Discussion:

The ITGRC agreed with the proposal of the GSTN in view of the technical analysis report for opening the portal.

ii. WP No. 4929 of 2021 M/s Maso Automative Pvt. Ltd V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
27AAACM4255C1ZT	Maharashtra	Private Limited Company

Issue: Petitioner filed TRAN-1 on 10.07.2017 for transfer of CENVAT balance in GST provisions. However, due to technical problems in the portal the amount was not transferred in GST ledger.

Status: GSTN is a party in this matter. GSTN vide email dated 02.11.2021 apprised the status of case to Aurangabad Commissionerate in terms of CBIC’s Circular No. 39/13/2018 dated 03.04.2018. The Hon’ble High Court vide order dated 04.01.2020 disposed of the matter with a direction to the Petitioner/tax payer to approach the ITGRC through proper channel with the grievance as raised in the petition and same to be considered by the committee in accordance with law and procedure.

Technical Analysis: On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed as per the logs that the Petitioner/tax payer first time opened Form and filed on the portal. During first attempt the reported error was PE (Process with error) for invalid registration for VAT/CENVAT/SVAT No. ADMPA3442KST001/27390006475. Further, ADMPA3442KST001/

27390006475 VAT/CENVAT has not been added in profile till date. ITC ledger was updated for first attempt. Revision was also not attempted. From the above it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

Decision:

The ITGRC agreed with the proposal of the GSTN in view of the technical analysis report for opening the portal.

iii. WP (T) 834/2021 Muvtons Castors Pvt Ltd V/s. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AADCM2916K1ZB	Uttar Pradesh	Private Limited Company

Issue: The Petitioner/tax payer seeks to avail the legitimate input tax credit through TRAN-1 as due to technical error he was not able to claim it.

Status: GSTN is a party in this matter. GSTN vide email dated 17.11.2021 apprised the status of case to the concerned Commissionerate, Uttar Pradesh in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter has been disposed of by the Hon'ble High Court vide order dated 05.10.2021 allowing the writ petition.

Technical Analysis: On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed that as per the logs the Petitioner/tax payer first time opened Form and tried to file but during first attempt the reported error was PE(Process with error) for invalid registration for VAT/CENVAT/SVATNo.AADCM2916KEM001. Further, AADCM2916KEM001VAT/CENVAT has not been added in profile before the end date of filing Tran-1 i.e. 27.12.2017. Also the Petitioner/taxpayer tried to claim ITC on his own GSTIN 09AADCM2916K1ZB which was a wrong way of claiming credit. ITC ledger was not updated for first attempt. Revision was also not attempted. From the above it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

Decision:

The ITGRC agreed with the proposal of the GSTN in view of the technical analysis report for opening the portal.

iv. W.P.(C)518 of 2021M/s JR Soods & Company Ltd V/s. Union of India in the Hon'ble High Court of Delhi

GSTIN/ Provisional ID	State	Constitution of Business
07AACCG6759K1Z5	Delhi	Private Limited Company

Issue: The Petitioner/tax payer failed to file Tran-1 Form due to Technical glitch on the portal. Simultaneously, the Petitioner/tax payer also failed to claim their ITC.

Status: GSTN is a party in this matter. GSTN vide mail dated 28.06.2021 shared the comments with GST Delhi East Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble Delhi High Court and there is no effective order passed in the matter. The next date of hearing in this matter is 04.02.2022.

Further Investigation by GSTN: An email dated 03.09.2021 was sent to the Petitioner requesting 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/tax payer was requested to provide the details by 8.09.2021. The Petitioner/tax payer replied vide email dated 07.09.2021 with screen shot dated 08.12.2017 of the GST system dashboard explaining that every time they tried filing their TRAN-1 both for Delhi and Haryana, the portal flashed a message again and again "Error occurred in submit. Please verify the data and submit after sometime." or "Submit is in progress. Click here for status". On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed as per the logs that the Petitioner/tax payer tried to file Tran-1 on 04/10/2017, 02/11/2017 & 12/12/2017. However, his ITC ledger was not updated and 'No' ARN generated for the aforesaid attempts. Further, based on the screen shot evidence submitted by the Petitioner/tax payer his case be considered as "Processed with Error". In view of the above, it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

Discussion:

The ITGRC agreed with the proposal of the GSTN in view of the technical analysis report for opening the portal.

v. WP (C) 26557/2020 M/s Merchem India Pvt. Ltd. V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
32AACCM2015Q1ZL	Kerala	Private Limited Company

Issue: The petitioner/tax payer filed GST TRAN-1 Form on 26.09.2017 on common portal. However, he received a message "process with error".

Status: Copy of the writ petition is not available with GSTN, nevertheless, the same was requested from the Commissionerate. GSTN is a party in this matter. The Hon'ble High Court vide its judgment dated 17.12.2020 disposed of the writ petition filed by the petitioner with the direction to ITGRC of GST council to take a call on the petitioners request for transition of Input tax credit in accordance of law.

Technical Analysis: On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed as per the logs that the user first time opened form and filed. During first attempt the reported error was PE (Process with error) for invalid registration for VAT/CENVAT/SVAT no. AACCM2015QXM001, AACCM2015QXM001 VAT/CENVAT has not been added in profile before till date. ITC ledger was also not updated for first attempt. Revision was attempted on 13.09.2017 but taxpayer received error "You have already submitted TRAN 1 Form. So, further Add/Edit/Delete of

any Data is not allowed." as Tran-1 for revision was not enabled at that time. In view of the above, it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

Discussion:

The ITGRC agreed with the proposal of the GSTN in view of the technical analysis report for opening the portal.

Other observations:

On discussion by the Additional Secretary, DoR, regarding the analysis of Court cases where there were directions from the Court and where only the petitions had been filed, the CEO, GSTN clarified that all these are the court cases filed by the taxpayers in the court and interim orders of the courts are received by the GSTN regularly. The GSTN does the technical analysis irrespective of whether the matter is pending in the court or the court has passed an order. These cases are then presented before the ITGRC by the GSTN with technical analysis. If a technical glitch is found in the analysis the ITGRC can take the decision to recommend the opening of the portal and if there is no technical glitch then the case is rejected and the jurisdictional office is informed accordingly to present the facts before the court.

The Joint Secretary (GST Council Secretariat) submitted that earlier also, the ITGRC had decided that GSTN should analyze all court cases irrespective of court directions. The Pr. CC, GST, Delhi also concurred with this decision of ITGRC.

The Chairman stated that such analysis about IT glitch by GSTN enabled the tax administration to take an informed decision to defend their cases and to file an affidavit. He agreed with the decision of previous ITGRC to get the technical analysis done by GSTN of all the court cases irrespective of the fact whether there is court order or not.

Decision:

The ITGRC considered all the five (05) cases falling under Category A1 on merit as the taxpayer faced the technical glitch and decided to recommend for opening the portal to these five taxpayers.

5 (ii). EVP, GSTN then presented the remaining eleven (11) court cases. Details of which are as under:

Category B1: As per GST System log, there are no evidences of error or submission/filing of TRAN-1

vi. Writ Tax No. 725/2019 M/s V K Brothers V/s. UOI & Others.

GSTIN/ Provisional ID	State	Constitution of Business
09ABBP3161C1ZU	Uttar Pradesh	Proprietorship

Issue: The Petitioner is seeking extension of the time limit for filing of GST TRAN-1 because his application was not entertained on the last date i.e. 27.12.2017 despite making several attempts on the last day the electronic system did not respond.

Status: Copy of the writ petition is not available with GSTN, nevertheless, the same was requested from the Commissionerate. Further, GSTN vide email dated 01.07.2021 apprised the status of case to Joint Commissioner (IT) Commercial Tax HQ, UP in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The Hon'ble High Court vide interim order dated 31.05.2019 directed the Respondents to re-open the portal within two weeks. The Hon'ble High Court further observed that in the event Respondents do not do so, they will entertain the GST Tran-1 of the Petitioner manually and pass order on it after due verification of credits as claimed by the Petitioner. Further, the Hon'ble High Court vide order dated 23.10.2021 allowed the Petition, in view of the reasons contained in the judgment dated 15.09.2021 passed in Writ Tax No. 477 of 2021.

Further investigation by GSTN: An email dated 03.09.2021 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 08.09.2021. No response was received from the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per log, the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger also not updated. The tax payer logged in multiple times with user "gaston2013" on GST portal on 27.12.2017. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

vii. WPA No 13601 of 2021 M/s Premium Fuels V/s. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
19AALFP8783A1ZT	West Bengal	Partnership

Issue: The Petitioner couldn't make declaration in form GST Tran-1 because of technical glitches on the common portal.

Status: GSTN is a party in this matter. GSTN vide email dated 6.09.2021 apprised the status of case to Kolkata Commissionerate (Centre) in terms of CBIC's Circular No.39/13/2018 dated 03.04.2018. The Hon'ble High court vide order dated 15.11.2021 dismissed the matter with further observation that the dismissal of the writ petition will not prevent the petitioner from making a grievance raised in this writ petition and which the respondent concerned will be bound to dispose of in accordance with law.

Further investigation by GSTN: An email dated 1.12.2021 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 03.12.2021. The Petitioner/tax payer responded vide its mail dated 01.12.2021 with a reference to a Ticket Number G-202112016951428 and a copy of screen shot under head "details of transfer of CENVAT credit for registered person having centralized registration under existing law". No screen shot evidencing error has been

provided by the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per log, the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger also not updated. Taxpayer logged in only on 28.06.2017 with user "premium_2015" on GST portal before 27.12.2017. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

viii. WP No. 1789 of 2021 M/s Shree Govindraj Distribution LLP V/s. UOI & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
27ACZFS2969K1ZY	Maharashtra	Limited Liability Partnership

Issue: The petitioner is seeking to avail the legitimate input tax credit through TRAN-1 as due to technical error he was not able to claim it.

Status: GSTN is a party in this matter. GSTN vide e-mail dated 24.11.2021 apprised the status of case to Aurangabad Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter is pending at pre-admission stage before the Hon'ble High Court (Aurangabad Bench). No effective order passed by the Hon'ble High Court. The next date of hearing is not updated on the court's website.

Further investigation by GSTN: An email dated 24.11.2021 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 26.11.2021. No response was received from the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per log, the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger was also not updated. Taxpayer logged in multiple time before 27.12.2017 with user "govindrajdis_12" on GST portal. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties. Further, it is observed that Taxpayer's GSTIN stands cancelled suo-moto with effect from 01.11.2017.

ix. SCA No. 10652/2020 M/s Shubham Engineering Works V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
24AUTPP0694E1ZA	Gujarat	Proprietorship

Issue: Petitioner tried to file TRAN-1 before 27.12.20217 but could not file it due to the technical issue.

Status: GSTN is a party in this matter. GSTN vide email dated 9.11.2021 apprised the status of case to Ahmedabad Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The

matter is pending adjudication before the Hon'ble High court. There is no effective order passed by the Hon'ble High Court. Next date of hearing is also not available on Court's website.

Further investigation by GSTN: An email dated 24.11.2021 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 26.11.2021. The Petitioner/tax payer replied vide mail dated 25.11.2021 with a copy of Form ST-3, reference to a Grievance Ticket No. GA 240319000551K dated 30.03.2019 and copy of GST Certificate. Further, after analysis of the aforesaid ticket No. GA240319000551K, it is noticed that the Petitioner/ taxpayer has admitted that due to oversight, he was not able to claim credit. No screen shot evidencing error has been provided by the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per log, the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger was also not updated. Taxpayer logged in multiple time on 27.12.2017 with user "shubham_1340" on GST portal. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

x. Writ Tax 356/2020 M/s Swati Enterprises V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AKJPK7573P1Z6	Uttar Pradesh	Proprietorship

Issue: Petitioner/tax payer was unable to file Form TRAN-1 due to technical problem on GST portal.

Status: GSTN is a party in this matter. Copy of the writ petition is not available with GSTN, nevertheless, the same was requested from the Commissionerate. Further, GSTN vide email dated 17.01.2022 apprised the status of case to Joint Commissioner (IT) Commercial Tax HQ, UP in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. Further, the Hon'ble Allahabad High court vide interim order dated 6.07.2020 directed the respondents to process the manual GST Tran-1 if filed by the taxpayer/petitioner in accordance with law.

Further investigation by GSTN: An email dated 13.01.2022 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 15.1.2022. The Petitioner/tax payer replied vide mail dated 15.1.2022 with a copy of email dated 16.07.2020 & 27.07.2020 respectively addressed to Joint Commissioner, Commercial Tax, Lucknow. The email comprises of reference of Hon'ble Allahabad High court direction vide its order dated 6.07.2020 wherein it has ordered the respondents to allow the process of GST Tran-1 of taxpayer/petitioner. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed as per logs that the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger also not updated. The

Petitioner/taxpayer logged in multiple time before 27/12/2017 with user "Ramesh_8130" on GST portal. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

xi. WP 24302/2019 M/s Hosamane Precision Products V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
29AAJFH0835K1Z4	Karnataka	Partnership

Issue: Petitioner/tax payer tried to file FORM GST TRAN-1 but couldn't proceed due to technical glitch on the GST Portal.

Status: GSTN is not a party in this matter. GSTN vide email dated 20.01.2022 apprised the status of case to Bengaluru- East Commissionerate 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, on 19.11.2019, with a direction to the Respondent to permit the petitioner to allow filing of declaration in Form GST Tran-1 & Tran-2, so that petitioner may file avail transitional credit.

Further investigation by GSTN: An email dated 14.01.2022 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 17.1.2022. He replied vide mail dated 17.1.2022 with a copy of forwarded e-mail dated 17.01.2022 wherein the reason of non- filing of Tran -1 they have attributed that "server is currently down for maintenance please try after some time". The petitioner/tax payer further stated that no screenshots evidencing any technical error/glitch on portal was taken by the Petitioner since they were unaware that he was required to take screenshots. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per logs the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger also not updated. The petitioner/taxpayer logged in multiple time before 27.12.2017 with user "hosamanegst" on GST portal. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

xii. WP (Tax) 1032/2018 M/s Mascot Speed Private Limited V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AAICM6336J1Z2	Uttar Pradesh	Private Limited Company

Issue: The petitioner/tax payer tried to file FORM GST TRAN-1 but couldn't proceed due to technical glitch on the GST Portal.

Status: GSTN is not a party in this matter. GSTN vide email dated 22.01.2022 apprised the status of case to Agra Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The Hon'ble High Court vide interim order dated 23.07.2018 directed the Respondents to reopen the portal within two weeks. The Hon'ble High Court further observed that in the event Respondents do not do so, they will entertain the application of the petitioner manually and pass orders on it after due verification of the credits as claimed by the petitioner. The matter has been finally disposed off by the Hon'ble High Court allowing the writ petition in terms of direction passed in Writ Tax No.477 of 2021 vide judgment dated 15.09.2021.

Further investigation by GSTN: An email dated 22.01.2022 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 25.01.2022. No response was received from the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per logs the petitioner/tax payer neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated. The petitioner/taxpayer logged in multiple time before 27.12.2017 with user "mascotsped1" on GST portal. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Category B2: Trans-1 Fresh/Revision Attempted with No error or No valid error reported

xiii.Writ Tax No. 560 of 2021 M/s Simplex Control Equipment Co. V/s. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09ABOPD3153E1ZU	Uttar Pradesh	Proprietorship

Issue: The Petitioner/tax payer could not file TRAN-1 due to technical glitches.

Status: GSTN is party in this matter. GSTN vide email dated 11.08.2021 apprised the status of case to Meerut Commissionerate in terms of CBIC's Circular No.39/13/2018 dated 03.04.2018. The matter is pending before Hon'ble Allahabad High Court. There is no effective order available on the High Court's website. Further, the next date of hearing is also not available on the Court's website.

Further Investigation by GSTN: An email dated 11.10. 2021 was sent to the Petitioner /tax payer 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/tax payer was requested to provide the details by 13.10.2021. No response was received by the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per log the Petitioner/tax payer has neither submitted nor filed the Form. No logs of save as well. ITC ledger also not updated. The Petitioner/Taxpayer logged in

multiple times with user "gaston2013" on GST portal on 27.12.2017. 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.

xiv.D.B. CW No. 5953/2019M/s Gaston Energy India Private Limited V/s. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
08AAFCG2824E1ZV	Rajasthan	Private Limited Company

Issue: The Petitioner/taxpayer is aggrieved on account of non-carry forward of Cenvat Credit of Rs.9,58,838/- as on 30.06.2017 as Transitional credit in electronic credit ledger on GST portal, since he was unable to completely revise the requisite return in Form Tran-1 on time due to technical glitch on the GST Portal.

Status: GSTN is a party in this matter. GSTN vide email dated 23.06.2021 apprised the status of case to the CGST Commissionerate (Jaipur) 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 there is no effective order available on the Court's website. Next date of hearing is also not available on Court's website.

Further Investigation by GSTN: An email dated 03.09.2021 was sent to the Petitioner /tax payer requesting 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/tax payer was requested to provide the details by 08.09.2021. He replied vide email dated 08.09.2021 with copies of letters dated 04.09.2017, 27.09.2017 and 31.05.2018 under Subject "Cenvat Credit Taken on Inputs" addressed to the Superintendent GST Jaipur with details of invoices on which input credit was yet to be taken. Further, vide aforesaid mail dated 08.09.2021, the Petitioner/tax payer shared a copy of letter dated 09.10.2018 addressed to the Chief Commissioner, GST Jaipur under subject "request to allow to take the eligible credit of previous regime to the electronic credit ledger" in the light of CBIC Circular No. 39/13/2018 dated 03.04.2018. The O/o Chief Commissioner in response to the aforesaid letter dated 09.10.2018 informed the Petitioner/tax payer vide letter dated 13.12.2018 that the Petitioner/taxpayer's case is not fit for consideration as per the Circular dated 03.04.2018 as the Circular provide for the opening of the portal for such tax payers who tried but were not able to complete TRAN-1 procedure (original or revised) on or before 27.12.2017, but in the Petitioner's case TRAN-1 has been filed successfully. No screen shot evidencing error has been shared by the Petitioner/ tax payer except the copies of aforesaid communications.

On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that, as per logs the Petitioner/tax payer first time filed Form on 12.10.2017. Revision has also been filed on 27.12.2017. ARN generated for both the successful submission and ITC ledger was updated as per claim made by the Petitioner/taxpayer for both the attempts. No error reported in logs. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

xv. Writ Petition (L) 16339/2021 M/s ESS Infraproject Pvt. Ltd. V/s. Union of India &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
27AAGCS7146C1ZD	Maharashtra	Private Limited Company

Issue: The petitioner/taxpayer is aggrieved with the issue that they had filed Tran-1 declaration on 28.08.2017 and received system generated acknowledgement, in which the status was shown as filed. However, on verification of the same on 5.09.2017, it is alleged that the same amount has not been credited in their electronic credit ledger, thereafter on 5.09.2017 they had filed Tran-1 second time which was also duly acknowledged by the system but the transitional credit was not reflected on their electronic ledger.

Status: GSTN is a party in this matter. GSTN vide email dated 12.08.2021 apprised the status of case to CGST & CX Mumbai Zone Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter is pending at pre-admission stage. Next date of hearing is not available on High Court's website.

Further Investigation by GSTN: An email dated 01.12.2021 was sent to the Petitioner /tax payer 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/tax payer was requested to provide the details by 03.12.2021. He responded vide mail dated 02.12.2021 explaining that they attempted to file TRAN-1 on 28.08.2017 vide ARN A270817264554Q. On confirming the status on the GST portal, the same appeared as "Filed". However, when the Petitioner/tax payer tried to verify the status of Tran- 1 on 05.09.2017, they observed that the amount of Rs.3381124/-(Rupees Thirty Three Lakh Eighty One Thousand One Hundred Twenty Four Only) was not credited in the electronic ledger. Then, the Petitioner/tax payer once again tried to file Tran-1 on 05.09.2017 and received ARN AA2709170119214. However, the balance of the above transitional credit was not reflected in the electronic credit ledger. The Petitioner /tax payer also shared following screen shot evidencing that he has attempted to file TRAN-1 on 28.08.2017 and 05.09.2017 along with e-mail acknowledgement. Further, he also shared E-mail of ticket raised at GST Helpdesk and follow up with GST helpdesk.

On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per the logs, the Petitioner/tax payer first time opened Form and tried to file however while attempting save/submit the reported error was PE (Process with error) for "Recipient's GSTIN should not be same as that of Registered User's GSTIN". This was a valid functional error. The Petitioner/ Taxpayer has filed Tran-1. Further, Revised Tran-1 was also filed successfully but ITC ledger not updated. ARN received for both the successful attempts.

Further, a WebEx meeting was conducted with the Petitioner/taxpayer (GSTIN 27AAGCS7146C1ZD, Legal Name: ESS INFRAPROJECT PRIVATE LIMITED) on 28.12.2021 at 12 Noon. Mrs. Vinitha, Mr. Winston Fernandes, and Adv. Rishabh Jain from Petitioner's side joined the meeting with GSTN technical team (assisted by GSTN-legal team). The purpose of the meeting was to verify the screenshots submitted by the Petitioner/ taxpayer on the issue reported at 19.09.2017 at 09:54 AM in *table 8->transfer of Cenvat credit for registered person*. It is observed that the screenshot shared by the Petitioner/tax payer is correct as the said error is also seen in the application logs on 26.08.2017 where the taxpayer has tried to upload same data four times and the system has given valid error message (Recipient's GSTIN should not be same as that of Registered User's GSTIN).

Please provide a valid Recipient's GSTIN). Thus the same not being a technical issue of the system, the Petitioner's case may be considered as not having faced any technical difficulties.

Category B6: Tran-1 Filed, eligible for Tran-2. Tran-2 fresh/revision attempted with no error or no valid error reported.

xvi. Writ Tax No 595/2019 M/s Krishna Automobiles Vs. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AJPPS5958P1ZT	Uttar Pradesh	Proprietorship

Issue: The petitioner/tax payer tried to file FORM GST TRAN-2 on the last date i.e. 30.06.2018 but same was not accepted by the portal due to technical glitch which continued throughout the day.

Status: GSTN is a party in this matter. GSTN vide email dated 18.06.2019 apprised the status of case to GST Commissionerate, Noida in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The Hon'ble Allahabad High Court vide its interim order dated 09.05.2019 directed the Respondents to reopen the portal within one month. The Hon'ble High Court further directed that in the event Respondents do not do so, they will entertain the GST TRAN-2 of the petitioner manually and pass orders on it after due verification of the credits as claimed by the petitioner. The matter has been finally disposed off by the Hon'ble Court allowing the writ petition in terms of direction passed in Writ Tax No.477 of 2021 vide judgment dated 15.09.2021.

Further investigation by GSTN: An email dated 14.01.2022 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 17.1.2022. The Petitioner/tax payer replied vide mail dated 18.01.2022 with a copy of letter dated 01.11.2021 of CGST Office, Bulandsahar addressed to the tax payer whereby he was requested to provide documents related to TRAN-2 verification. The Petitioner/tax payer further explained that all the documents has already been Submitted in Bulandsahar GST Office as against the aforesaid letter dated 01.11.2021 received to him. No documents/screenshot evidencing the error has been provided by the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed as per logs that the petitioner/tax payer filed Tran-1 successfully on 22.12.2017 along with revision. ARN received for the both the successful submission. ITC ledger also updated. Further, Table 7 &Section 7(b) and table 7(d) value has been declared by the Petitioner/Taxpayer and he was eligible for filing of Tran-2.

Further, as per logs it is also observed the Petitioner/taxpayer tried to file Tran-2 for July 2017 period on 12.03.2018 and record processed successfully, however, the filing was not completed before 30.06.2018 which was the end date for filing of Tran-2. No ARN received for the attempt and ITC ledger was also not updated. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion & Decision:

The ITGRC deliberated upon these 11 cases based on technical analysis conducted by the GSTN. ITGRC observed that existence or non-existence of the technical glitch is a matter of fact and technical analysis confirms this fact that there existed no technical glitch in these cases (11 cases). Accordingly, ITGRC decided that these 11 cases are liable to be rejected on merit.

6. EVP, GSTN then presented refund cases covered under additional agenda. Details of which are as under:

Additional Agenda (Legal issues) for 16th ITGRC (Refund issues):

6 (i). M/s Futuristic Offshore Services & Chemical Limited

Brief Facts:

The present matter of M/s Futuristic Offshore Services & Chemical Limited was received via letters dated 23.03.2021 from GST Policy Wing and CGST & Central Excise Mumbai Zone on 20.04.2021, with a request to provide its comments upon the issue of taxpayer.

GSTIN under ONP Category	GSTIN under Normal Category
2720IND00006ON1	27AAACG1524C2Z8

M/s Futuristic Offshore Services & Chemical Limited (herein referred as ‘The registrant’) has taken GST registration under UIN/ONP category (ONP 2720IND00006ON1) mistakenly and deposited amount of Rs.1,36,72,688 in the electronic cash ledger. The ONP category of registration are not required to pay taxes and therefore the functionality of refund of “Excess cash ledger balance” is not enabled for such category. As the registrants not an ONP and there is no option available for refund of excess cash ledger balance, the amount in Cash ledger remains un-utilised and got stuck in the cash ledger. The registrant also has taken new registration under normal category having GSTIN 27AAACG1524C2Z8. The registrant made representations to GST Policy wing and Mumbai West Commissionerate, CGST & CX, Mumbai for allowing refund of the amount lying in the cash ledger balance of the ONP registration. These representations are forwarded to GSTN for consideration and for checking the feasibility of transferring the amount from the existing ONP registration to a new registration number.

Technical Analysis:

In order to provide remedy for the GST applicant, this issue has been analyzed and it is found that this issue has arisen due to lack of functionality of refund of excess cash ledger balance for ONP category of registration. Since no option is available in the GST system for seeking remedy, it necessitated performing data fixes through auditable utilities.

For addressing the problem, the feasibility of transferring the cash ledger balance of Rs 1,36,72,688 lying in ONP registration 2720IND00006ON1 to Normal category registration 27AAACG1524C2Z8 has been checked. This issue is treated as a revenue neutral situation as it is a transfer of amount in cash ledger from one type of registration to another type of registration belonging to the same person and hence considered having no financial implication. Accordingly, this is classified under the category of issue “Sl. No. 2 - Technical issue with no financial implications – Correct data known” as approved by ITGRC in its 15th meeting for addressing technical issues through data fixes. Necessary approval was given by SVP (Services) on 21.10.2021 for performing the data fix and the cash ledger balance of Rs.1,36,72,688 was transferred from ONP registration 2720IND00006ON1 to Normal category registration 27AAACG1524C2Z8.

Discussion:

The CEO, GSTN submitted that ideally the portal should have procedure to address all kinds of problems while dealing with ledgers and financial transactions. That certain corner situations arose which required data fixes from the background. Accordingly, in the last meeting, the ITGRC and the GST Council approved the SOP as to who would approve those data fixes at GSTN and the ITGRC was given the supervisory role to whom the GSTN would report the cases after making the data fixes internally. In certain cases, GSTN would do data fixes after obtaining the approval of the ITGRC. That under that SOP, the GSTN did the data fixes in that case where the money was to be deposited in account 'A' but was deposited in account 'B' and this was corrected through data fix.

The Chairman observed that revenue neutrality was there as the other account would have obtained the refund. Also, the PAN was also same. He suggested that the data fix could be approved. All the Members agreed with the same and ITGRC approved the subject data fixes.

Decision:

ITGRC took note of the data fixes done by the GSTN and approved the same.

6 (ii). M/s Alstone International**Brief Facts:**

GSTIN	State	Constitution of Business
36AANFA5890R1ZH	Telangana	Partnership

The present matter of M/s Alstone International GSTIN 36AANFA5890R1ZH has not been placed before ITGRC as the same was not received by GSTN in accordance with CBIC's Circular No. 39/13/2018 dated 3.4.2018. The aforesaid matter has been received by GSTN vide mail dated 20.07.2021 from Commercial Tax Department (Telangana) forwarding the representation of the Tax payer under subject "regarding opening of TRAN-1" along with the Hon'ble High Court at Delhi's order dated 27.05.2021 passed in WP(C) No.3760 of 2020 titled M/s Alstone International Vs. UOI and Ors. Accordingly, this GSTIN 36AANFA5890R1ZH has been included for technical analysis for the purpose of ITGRC investigation.

Technical Analysis:

GSTN vide email dated 06.09.2021 has communicated to Commercial Tax Department Government of Telangana apprising the initiation of technical analysis in the matter in terms of CBIC's Circular No. 39/13/2018 dated 3.4.2018. Further, vide aforesaid e-mail dated 06.09.2021 GSTN apprised that in its 11th meeting it was decided by ITGRC that once any Court's order has been accepted by the jurisdictional authority and had attained finality, it needs to be communicated in writing to GSTN with the approval of the competent authority of Centre/ State Tax to implement that order. On receiving of the communication from the jurisdictional field formation with the approval of the Commissioner of State Tax, GSTN will take action for compliance of the Court's order for opening of the portal for the said taxpayer. However, the jurisdictional tax authority needs to verify the correctness and eligibility of the said transitional credit claimed by the taxpayers as per provisions of CGST Act 2017 and the rules made thereof and to take appropriate remedial action, if required. The said decision was communicated vide OM no. 266/11th ITGRC/GSTC/2020(Part-1)/2909 dated 17.06.2020 (copy attached).

In view of the above, GSTN vide aforesaid mail dated 06.09.2021 has requested Commercial Tax department to check as to whether the facts stated by the taxpayer are correct and confirm to GSTN in writing with respect to further action required to be taken by GSTN. However, GSTN has not received any reply/communication from the Department's end.

On completion of technical analysis conducted by GSTN/Infosys, it has been prima facie observed that as per logs the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well, ITC ledger also not updated. The Petitioner/taxpayer logged in multiple times with user "gaston2013" on GST portal on 27.12. 2017. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties under the category B-1.

Discussion:

The CEO GSTN submitted that the Delhi High Court order would not be applicable for another state and GSTN also found that there was no technical glitch. On both counts it should be rejected. However, Chairman observed that due to principal place of business being in Delhi, the Delhi High court had the jurisdiction to pass the order under Article 226. The CEO, GSTN clarified in response to a query from the Additional Secretary, DoR that the High Court direction was that the case be considered by the ITGRC. The Additional Secretary, DoR submitted that as the direction of the Court was only to consider the case and as there was no technical glitch, the case should be rejected. The Chairman also agreed that as no technical glitch existed in this case, it should be rejected on merit.

Decision:

The ITGRC took note of the technical analysis by GSTN and rejected the case on merit as the taxpayer did not face any technical glitch.

7. EVP, GSTN, then presented the agenda "*One day late fee waiver for August-2021 period GSTR-3B late filing due to payment issue with RBI*" along with agenda "*Reset of submitted GSTR-1 for M/s Vodafone Idea Ltd.) GSTIN-10AAACB2100P1ZC*" and briefed the issue which is summarized as under: -

7(i). One-day late fee waiver for August-2021 period GSTR-3B late filing due to payment issue with RBI.

Brief Issue:

On 20th Sep, 2021 some of the taxpayers could not file their GSTR-3B return on GST portal due to payment issue in NEFT/RTGS payment mode. Some of taxpayers had paid the amount to the respective bank through NEFT/RTGS but the same was not credited into their Cash Ledger.

ii. As the payment for the month of August-2021 was comparatively low hence on investigation it was observed that CPIN notification for NEFT/RTGS payment were not being received from RBI end. An immediate action was taken by GSTN and on further analyzing, it was identified that the issue arose due to some technical issue at Reserve Bank of India end and the same was communicated instantly to RBI on 20th Sep at 03:00 PM.

iii. Reserve Bank of India accepted that there was a network issue at RBI end due to DC/DR drill held by RBI on 19th Sep, 2021 and due to this the GSTN's inbound traffic was not whitelisted (*allowed as coming from trusted source*) on RBI System. GSTN actively followed up the matter with RBI and the issue could be resolved by around 07:20 PM on 20th Sep, 2021. However, as there was a huge pending transactions in the queue, the Electronic Cash Ledger data for all affected taxpayer could be updated by 21st Sep, 2021 only.

iv. On account of this technical issues at the end of RBI, transaction success, which also included the CIN (*Challan Identification Number*) details, could not be transmitted to the GSTN's System till around 07:20 PM on 20th Sept. 2021. This issue was faced for all NEFT/RTGS transactions. As per the defined process, after receipt of successful transaction along with CIN (*Challan Identification Number*) data from RBI, the Electronic Cash Ledger is updated on GST System. Consequently, the amount was debited from taxpayer's bank account but the same was not updated in the *Electronic Cash Ledger* of the taxpayers.

v. Since the Electronic Cash Ledger was not updated even after deducting money from taxpayer's bank account, it is likely that the taxpayers, for whom CPIN notifications were received after 07:00 PM on 20th Sep, 2021 were unable to file GSTR-3B on time.

vi. There was no prior communication by RBI regarding white listing 11 series IP along with 13 series IP addresses. Also RBI could not monitor their CPIN notification failures to GST Portal.

vii. Once the issue was identified, the same was brought to the notice of the Government. In view of the genuine issue of the affected taxpayers, the Government announced that it would consider waving the *Late fees* and *Interest*, for the affected period of **one** day.

viii. On analyzing the data, 77,074 such taxpayers were identified, who were affected due to this technical glitch and such taxpayers need to be given relief of *Late fees* and *Interest* for **one** day.

GSTN's Proposal:

- a. It is proposed to provide one-day late fee waiver relief for above taxpayers for late filing of GSTR-3B of August-2021 period by re-crediting one day's late fee to their electronic cash ledger.
- b. Suitable action for waiver of interest for one day may also be recommended & placed before the GST Council.

Discussion:

The Chairman stated that this was a larger debate and not an ITGRC matter. That waiver of late fee, interest waiver was a decision which was to be taken by the GST Council and that should be the agenda point. The JS (GSTC Sectt.) submitted that in the scope of ITGRC, legal issues could also be considered and one of the legal issues which could be considered was waiver of late fee.

Para No.7 of the Circular No. 39/13/18 - GST dated 03.04.2018 was read as under

"7.1 Where an IT related glitch has been identified as the reason for failure of a taxpayer in filing of a return or form prescribed in the law, the consequential fine and penalty would also be required to be waived. GST Council has delegated the power to the IT Grievance Redressal Committee to recommend waiver of fine or penalty, in case of an emergency, to the Government in terms of section 128 of the CGST Act, 2017 under such mitigating circumstances as are identified by the committee. All such notifications waiving fine or penalty shall be placed before GST Council.

7.2 Where adequate time is available, the issue of waiver of fee and penalty shall be placed before the GST Council with recommendation of the IT-Grievance Redressal Committee."

The Chairman stated that even in the Circular, interest waiver was not covered under the scope of ITGRC even if there was an IT glitch. The Circular had made provision only for late fee and penalty. The JS (GSTC Sectt.) further submitted that in the last ITGRC meeting, the similar case was discussed where there was a technical glitch while filing the GSTR-4.

The ITGRC recommended the waiver of interest and it was placed before the GST Council. The Member from Haryana also submitted that ITGRC had already taken up the interest waiver issue and that was placed before the GST Council.

The Chairman suggested that ITGRC would only examine whether there was a technical glitch on that day. The committee then decided to affirm only the fact of technical glitch based on technical analysis by GSTN.

The ITGRC confirmed that there existed a technical glitch and recommended for waiver of penalty and late fee only. However, as ITGRC had no powers to recommend waiver of interest, ITGRC wouldn't recommend waiver of interest.

Decision:

The ITGRC confirmed that there was a technical glitch in this case and recommended for waiver of penalty and fine only.

7(ii) Reset of submitted GSTR-1 for M/s Vodafone Idea Ltd. (GSTIN-10AAACB2100P1ZC)

EVP, GSTN, then presented the agenda "Reset of submitted GSTR-1 for M/s Vodafone Idea Ltd. (GSTIN-10AAACB2100P1ZC)" and briefed the issue which is summarized as under: -

Brief Issue:

M/s Vodafone Idea limited bearing GSTIN 10AACB2100P1ZC requested on 08th Oct, 2021 that they had inadvertently submitted their Sep-2021 GSTR-1 as *NIL* while they have liability to declare in that month. M/s Vodafone Idea limited requested to bring their GSTR-1 status back to *Not Submitted/Saved* from *Submitted* so that they can file their GSTR-1 with correct data. The said GSTR-1 was only *Submitted* and not *Filed*.

The issue was analyzed and it was found that the:

1. GSTR-1 was in submitted stage only and not Filed.
2. No record/invoice was added/saved in GSTR-1.

Hence, to ensure that correct liabilities are reported in GSTR-1, actual liabilities are auto-populated in GSTR-3B and tax is correctly paid in GSTR-3B, the status of GSTR-1 of M/s Vodafone Idea limited bearing GSTIN 10AACB2100P1ZC was reverted back to *Saved* from *Submitted* on 11.10.2021.

Discussion:

The CEO, GSTN elaborated that basically the error was ticket based. That at present, on the day of filing, taxpayer raised the ticket and then GSTN did the reset process. He stated that in this particular case, there were a large number of invoices and there was no revenue involved, so there was a legitimate reason to fix the issue.

The Chairman observed that whether there is revenue involvement or otherwise, such type of data fix for returns should be avoided. The Member from Haryana concurred with the view of the Chairman and stated that they had corrected their (taxpayers) return 2A/2B but before the due date. He suggested that that mistakes committed by a person in return filing which fixes the liability, should not be corrected based on email or ticket on the portal. The Pr.CC Delhi also agreed with the view of Haryana.

The CEO, GSTN submitted that it was a case of GSTR- 1 and not of GSTR-3B and requested the ITGRC to recommend it as a matter of exception since it had already been corrected with the direction

that in future where the return filing had already happened, no such opening should be done and close the matter for once and all.

The Chairman stated that GSTR-1 also was a taxpayer's liability as per law and agreed with the CEO, GSTN's request to approve the data fix as one of case and that should not be considered as a precedent. The CEO, GSTN further submitted that, for such cases prior approval should be taken in future from the ITGRC if there were enough mitigating circumstances. The Additional Secretary, DoR enquired whether that was a case of post-facto approval. The CEO, GSTN submitted that all data fixes were post-facto approvals only. The Additional Secretary, DoR submitted that it was his consistent stand that any mistake of the taxpayer to his disadvantage should be corrected.

The Chairman stated that he too agreed with the view. If the taxpayer had committed a mistake and if that was apparent on record, he should be allowed to correct that but in the scheme of GST returns, any mistake would have to be corrected in the subsequent return for the given tax period for which return had been filed. He stated that entire fund settlement happened based on the declaration filed in return and that would get disturbed. He stated that by allowing a taxpayer to alter the return, either by raising the ticket to the GSTN or on his own, would interfere with the whole fund adjustment and ledgers. The taxpayer could not change the liability downwards or increase the ITC entitlement upwards—He stated that in the present case, though there was NIL liability and actual return was submitted which was turned into “saved from submitted” through data fix.

On a query from the Additional Secretary, Joint Secretary (GSTC Sectt.) displayed the SOP for data fixes of technical issues as decided in the previous meeting which states that technical issues with or without financial implications could be done by the GSTN. However, instant case went beyond the SOP and was not a technical issue as approved in the SOP. The Additional Secretary stated that GSTN should not do such data fixes in future.

The Chairman also agreed that this was not a system issue or technical issue and then decided to approve the case as an exception and that in future, returns would not be considered for .data fix by the GSTN. If any issue demonstrated a technical glitch, it could be fixed by the GSTN with prior approval of ITGRC. However, if that was a mere mistake of the taxpayer, GSTN should resist from correcting that.

Decision:

The ITGRC approved the case without any precedent value (as *fait accompli*). Further, it was decided that return filing error is not a data fix and GSTN would not do it unless there is a demonstrated technical glitch and ITGRC has given its prior approval.

8. Agenda on Data Fix issues (Technical issues requiring data fix of the processed incorrect data through backend utilities):

EVP, GSTN presented the agenda “Agenda on Data Fix issues (Technical issues requiring data fix of the processed incorrect data through backend utilities)”. Details of which are as under:

As per the decision of the 15th ITGRC meeting, held on 12/08/2021, GSTN has initiated fixing of technical issues identified, as per the SOP approved by the ITGRC.

The below process has been followed in remediating the data fixes:

- Analysis of data discrepancy.
- Confirmation of discrepancy sought from MSP.

- Upon confirmation, utility created by MSP to extract similar cases from GST System data.
- A root cause analysis conducted to fix the issue and implemented by MSP in consultation with GSTN to rectify data inconsistency.
- Scripts created for data fix and tested in multiple cycles by MSP and GSTN.
- Approval note presented to competent authority to fix the issue.
- After approval, audit entries created for each change affecting the data.
- Scripts executed and post execution state of data stored for reference later.

The list of data fixes implemented is presented to ITGRC for review/approval as below. There is no case of global data fix requiring prior approval of ITGRC.

S. No	Issue reported	Approved By	Date of Approval	Date Intimate MSP to perform Data Fix	Issue Description with No. of Cases Impacted	Financial Implication
1	The end user is unable to file GST CMP-08 as error is reflecting "Data for the internal Transaction Id Already Posted"– RQM: 21266	Sh. Dheeraj Rastogi	11-08-21	12-08-21	<p>After filing CMP-08 four taxpayers had reported the status of the Form is being shown as Not Filed for the tax period prior to June 2021.</p> <p>This is due to improper handling of transactions in CMP 08 form where partial transaction was saved. As partial transaction was saved, the status remained as Ready to File (RTF) instead of file. Also the records was posted in the cash ledger.</p> <p>The utility was run to change the status from ready to file to Filed for the 4 taxpayers.</p> <p>The permanent code fix has been released to production on 14th Jun'21.</p>	No
2	Extension given for filing various forms including Form GST ITC-01, as a COVID Relief measure; error in filing ITC-01 by some taxpayers – RQM: 21035	Sh. Dheeraj Rastogi	31-08-21	31-08-21	<p>Few taxpayers had raised ticket on GST Helpdesk that they were unable to File ITC-01 to claim ITC on the stock after taking new registration or after withdrawal from Composition scheme.</p> <p>During COVID period, Government inter-alia, had extended the period of filing the said form to 30th June, 2021 for</p>	No

					<p>those statements which had become due for filing between 15th April to 29th June, 2021, vide Notification no. 24/2021 dated 01-06-2021.</p> <p>After updating of due date to 30th June 2021 for ITC-01, the taxpayers were not able to file ITC-01 between 1st to 7th July 2021 as the due date for those taxpayers also got updated to 30th June 2021.</p> <p>On investigation, it was found that 156 taxpayers have attempted to file but could not file ITC-01 due to defect in the system application.</p> <p>This issue was fixed vide Emergency Change Request no. 13010 on 7th July 2021.</p> <p>One week extension of due date was provided to all such taxpayers to file ITC-01.</p>	
3	Negative balance is appearing in the credit ledger of a taxpayer.	Sh. Dheeraj Rastogi	05-11-21	06-11-21	<p>Due to defect in the system application, data saved in Big Data Store-HBase and Ledgers for GSTR3B Form were different for one taxpayer [GSTIN: 37AAECH3295B1ZP] and the ITC ledger reported excess ITC Credit. In order to correct the excess ITC credit, the GST System had posted the entry to recover the excess ITC credit. Meanwhile the taxpayer had already paid this ITC Credit through DRC-03 and logged Ticket at helpdesk to reverse the credit.</p> <p>The credit was reversed as the taxpayer had already paid through DRC-03.</p>	Yes
4	CMP08 - Few taxpayers (91 cases) are unable to file return as there are open	Sh. Vashisht ha Chaudhary	10-11-21	10-11-21	<p>Due to defect in the system application, filing process of statement by composition taxpayer (CMP-08) could not be completed. The correct entries in the relevant liability ledger tables</p>	Yes

	liabilities due to rollback issues				and Cash Ledger were posted by a utility so that their filing process could be completed and the taxpayer can file the return/statement for the subsequent tax period. This issue has been fixed on 9th July 2021. Taxpayers impacted - 91	
5	Amount not credited to cash ledger on filing of GSTR-2X (TDS/TCS credit received form)	Sh. Vashisht ha Chaudhary	10-12-21	10-12-21	After filing GSTR2X form, the amount was not credited to the cash ledger due to defect in the system application software for one taxpayer . The amount had been credited to cash ledger on the basis of GSTR-2X of the relevant tax period. The issue has been fixed on 17th Dec 2021 .	Yes
6	As per the CGST Act, Section 170 only integer values should be reported in the Cash Ledger. Due to defect in the GST System, there were decimal values present which has been cleaned off.	Sh. Dheeraj Rastogi	29-09-21	01-10-21	During the initial phase of GST implementation, taxpayers were allowed to make debit in cash ledger in decimal values also. Later on, it was restricted to whole number for all the ledger transactions. As a result, the Cash Balance has retained such decimals values which cannot be used in any ways The data has been rounded off to the nearest integer for 8187 taxpayers and the impact of rounding off was Rs 1013.02 p	Yes
7	ISD invoices are not reflecting in GSTR2A form when uploaded from GSTR6 form.	Sh. Dheeraj Rastogi	25-01-22	25-01-22	ISD invoices are not reflecting in GSTR2A form when uploaded from GSTR6 form. This is happening only for taxpayers, who are using the GSTR6 offline tool to upload ISD invoices. After uploading from Offline Tool, the ITC is distributed to other GSTINs basis the same PAN. There was defect in the system that the Credit distributed would only happen for one GSTIN and ignored the other GSTIN. A data fix was done to	No

					correct the data for 72 ISD users . This issue has been fixed on 31st Jan 2022	
8	Request to transfer the amount in the Cash Ledger from Temporary ID to the regular GSTIN of taxpayer.	Sh. Dheeraj Rastogi	13-01-22	14-01-22	Three taxpayers had deposited tax amount on Temporary Advance Ruling ID where as they had regular GSTINs (08JHBP5226B1ZL, 08JEIPS2409C1ZF and 08BKQPA2467N1ZN). On request from GCST Jodhpur Commissionerate, the amount in the Advance Ruling ID was transferred to their regular GSTINs in their respective cash ledger. This issue was fixed on 18 th Jan 2022.	No
9	Form GST ITC-03- Taxpayers who had opted in for Composition scheme to reverse the ITC. Due to defect in the GST System, after filing ITC-03 the amount was not debited from the Ledger.	ShVashi shtha Chaudhary	10-12-21	10-12-21	The normal taxpayers after opting to pay tax under composition scheme have to surrender ITC availed on stock through Form GST ITC-03 since composition taxpayers are not entitled to claim credit. Due to technical issue in the system application software, 131 taxpayers have reported liability but debit could not be made in credit/ cash ledger, though filing of the said form had happened and ARN was generated. To recover the amount due, the aforesaid form had to be reset to enable the 131 taxpayers to file again and pay the liability declared. The issue has been fixed on 25th January, 2022 .	Yes
10.	Cash balance correction due to credit and debit happened simultaneously	Sh. Vashisht ha Chaudhary	10-11-21	12-11-21	In a rare event, the transaction of debit from GSTR3B and CIN (credit) record happened concurrently. Due to dirty read, the credit entry did not update the cash ledger Balance. Consequently, the debit entry read the preceding balance, without reading the credit entry in the cash Ledger.	Yes

					<p>Ticket no. 6415257 was logged for this issue by the taxpayer with GSTIN: 27ATNPK9574H1ZY. The data fix in the cash ledger has been done on 16/11/2021.</p>	
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Decision:

The Committee observed that all the instances were technical data fixes as categorized by the approved SOP. The ITGRC then decided to take note of all the data fixes and unanimously approved them.

Annexure-1

Centre:

- i. Member (GST), CBIC – Sh. D.P. Nagendra Kumar (Chairman of ITGRC)
- ii. Additional Secretary, GSTC- Dr. C.S. Mohopatra
- iii. Additional Secretary, DoR – Sh. Vivek Aggarwal
- iv. Pr. Chief Commissioner, CGST, Delhi Zone – Smt. Mallika Arya
- v. ADG, DG Systems – Sh. Akhil Kumar Khatri

States:

- i. Additional Excise & Taxation Commissioner, Haryana – Sh. Siddhartha Jain
- ii. Deputy Commissioner, GST Cell, State Tax, Gujarat – Sh. Ridesh Rawal
- iii. Joint Commissioner (IT), State Tax, Tamil Nadu – Sh. J.Rasal Doss Solomon
- iv. Commissioner, State Tax, West Bengal – Sh. Khalid Aizaz Anwar

GST Council Secretariat:

- i. Joint Secretary, GSTC- Smt. Ashima Bansal

Special Invitee:

- i. CEO, GSTN – Sh. Manish Sinha
- ii. Vice President, GSTN- Sh. Dheeraj Rastogi
- iii. Pr. Commissioner, GST Policy Wing- Sh. Sanjay Mangal

ANNEXURE-2

1. Agenda: Case of TRAN-1 sent by Nodal Officers of Centre/States

	Category	Detailed Description	Count of Taxpayer
B3	TRAN-1 Successfully Filed as Per Logs with No Valid Error reported.	The taxpayer has successfully filed TRAN-1 and no technical error has been found.	01
	Total		01

Category B3: TRAN-1 Successfully Filed as Per Logs with No Valid Error reported:

The taxpayer has successfully filed TRAN-1 and no technical error has been found.

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	27AACCR9743G1Z3	RADIANCE BIO SYN PVT LTD	Pvt. Ltd. Co.	CGST – Rs. 1986338	Maharashtra	Ms. Kalyaneshwari Patil, Dy. Commr. State Tax	State	gstit.state@mahagst.gov.in

2. Agenda: Cases of TRAN-1/TRAN-2 forwarded by State Authority

The following two cases have been forwarded to GSTN for processing by the State authority after expiry of extended due date i. e. 31/08/2020.

Sr. No.	GSTIN/ Provisional Id	Legal Name	Module	Date of receipt by GSTN	Jurisdiction	State
1	27AAACP2803P1Z9	Pradman Engineering Services P. Ltd.	Tran-1	21/09/2021	State	Maharashtra
2	27AAACK6569R1ZN	KAISER-E-HIND PVT. LTD	Tran-1	21/09/2021	State	Maharashtra

Brief Facts:

The Maharashtra state authorities had initially submitted the above cases in December 2019. However, the processing of cases had been deferred at that time as the representations from the jurisdictional officers were being received without complete information and/or proper recommendations. The representations were being forwarded by them without following the SOP and the instructions issued vide Circular No. 39/13/2018 dated 3/4/2018. In view of this, detailed instructions for forwarding the representations by jurisdictional Nodal Officers and processing by GSTN were issued vide GST Council's O.M. F. No. 71/Expansion-ITGRC/GSTC/2019/1512 dated 06.02.2020 and CBIC letter F. No. CBEC-20/10/16/2018-GST (Pt. I) dated 04.02.2020. An email id tran.extscope@gstn.org.in was also designated for sending cases to GSTN.

The instructions issued under the OM/Letter were also forwarded by GSTN individually to the State tax administrators/ Nodal officers, on 6th and 7th February 2020. They were informed that **Cases received from Nodal Officers after 31.03.2019 were not examined and were not put up before IT-GRC**. As per directions of competent authority, the Nodal Officer were requested to send all the pending representations of the taxpayers in the cases of non-filing/non-revision of TRAN-1/TRAN-2, which were not covered under the list of already approved / not approved cases. The processing of TRAN-1/ TRAN-2 representations, received from jurisdictional Nodal Officers, was re-started in February 2020 as per the directions of ITGRC issued in its 10th meeting, held on 22nd January 2020.

Observation & Recommendation:

The tax authority has re-submitted the cases for processing by GSTN on 21/09/2021, well after the extended due date of 31/08/2021. In view of the observations of the GST Council in 43rd Meeting, held on 28th May 2021, GSTN has already stopped processing of cases. Therefore, ITGRC decision is requested as regards further processing of these cases by GSTN.

3. Agenda: Writ Petition Cases

TRAN-1/TRAN-2

Category No.	Category	Detailed Description	Count of Taxpayer
Category A-1	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.	5
Category B-1	As per GST system log, there are no evidences of error or submission/filing of TRAN1.	As per GST System log, there are no evidences of error or submission/filing of TRAN-1.	7
Category B-2	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 B-3	Successfully Filed as Per Logs with No Error reported.	The Taxpayer has successfully filed TRAN-1 and no technical errors had been found in the examined technical logs.	2
Category B-6	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.	1
	Total		16

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 revised TRAN1 but could not file because of errors.

i. WP(C) No. 2238 /2021 Delhi Wax Refinery V/s. UOI & Ors

GSTIN/ Provisional ID	State	Constitution of Business
07AAKPR8160N1ZY	Delhi	Proprietorship

Issue: Every time an attempt was made to save the uploaded data the system logged out the Petitioner/tax payer from the portal. Despite making several efforts the petitioner/tax payer was

unable to log in to the portal as it repeatedly showed either a “Network Error” or the “Site cannot be reached”.

Status: GSTN is a party in this matter. GSTN vide email dated 3.09.2021 shared the comments in the matter and also 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 25.04.2022. No effective order is available on the Court’s website.

Technical Analysis: On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed as per the logs that the Petitioner/tax payer first time opened Form and tried to file, however while attempting to save/submit, the reported error was PE (Process with error) for invalid registration for VAT/CENVAT/SVAT No. AAKPR8160NEI002. This VAT/CENVAT has not been added in profile till date. ITC ledger not updated and ARN also not generated. Revision was also not attempted. From the above it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

ii. WP No. 4929 of 2021 M/s Maso Automotive Pvt. Ltd V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
27AAACM4255C1ZT	Maharashtra	Private Limited Company

Issue: Petitioner filed TRAN-1 on 10.07.2017 for transfer of CENVAT balance in GST provisions. However, due to technical problems in the portal the amount was not transferred in GST ledger.

Status: GSTN is a party in this matter. GSTN vide email dated 02.11.2021 apprised the status of case to Aurangabad Commissionerate in terms of CBIC’s Circular No. 39/13/2018 dated 03.04.2018. The Hon’ble High Court vide order dated 04.01.2020 disposed of the matter with a direction to the Petitioner/tax payer to approach the ITGRC through proper channel with the grievance as raised in the petition and same to be considered by the committee in accordance with law and procedure.

Technical Analysis: On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed as per the logs that the Petitioner/tax payer first time opened Form and filed on the portal. During first attempt the reported error was PE (Process with error) for invalid registration for VAT/CENVAT/SVAT No. ADMPA3442KST001/27390006475. Further, ADMPA3442KST001/27390006475 VAT/CENVAT has not been added in profile till date. ITC ledger was updated for first attempt. Revision was also not attempted. From the above it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

iii. WP (T) 834/2021 Muvtons Castors Pvt Ltd V/s. UOI & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AADCM2916K1ZB	Uttar Pradesh	Private Limited Company

Issue: The Petitioner/tax payer seeks to avail the legitimate input tax credit through TRAN-1 as due to technical error he was not able to claim it.

Status: GSTN is a party in this matter. GSTN vide email dated 17.11.2021 apprised the status of case to the concerned Commissionerate, Uttar Pradesh in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter has been disposed of by the Hon'ble High Court vide order dated 05.10.2021 allowing the writ petition.

Technical Analysis: On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed that as per the logs the Petitioner/tax payer first time opened Form and tried to file but during first attempt the reported error was PE(Process with error) for invalid registration for VAT/CENVAT/SVATNo.AADCM2916KEM001. Further, AADCM2916KEM001 VAT/CENVAT has not been added in profile before the end date of filing Tran-1 i.e. 27.12.2017. Also the Petitioner/taxpayer tried to claim ITC on his own GSTIN 09AADCM2916K1ZB which was a wrong way of claiming credit. ITC ledger was not updated for first attempt. Revision was also not attempted. From the above it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

iv. W.P.(C))518 of 2021M/s JR Soods & Company Ltd V/s. Union of India in the Hon'ble High Court of Delhi

GSTIN/ Provisional ID	State	Constitution of Business
07AACCG6759K1Z5	Delhi	Private Limited Company

Issue: The Petitioner/tax payer failed to file Tran-1 Form due to Technical glitch on the portal. Simultaneously, the Petitioner/tax payer also failed to claim their ITC.

Status: GSTN is a party in this matter. GSTN vide mail dated 28.06.2021 shared the comments with GST Delhi East Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble Delhi High Court and there is no effective order passed in the matter. The next date of hearing in this matter is 04.02.2022.

Further Investigation by GSTN: An email dated 03.09.2021 was sent to the Petitioner requesting 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/tax payer was requested to provide the details by 8.09.2021. The Petitioner/tax payer replied vide email dated 07.09.2021 with screen shot dated 08.12.2017 of the GST system dashboard explaining that every time they tried filing their TRAN-1 both for Delhi and Haryana, the portal flashed a message again and again "Error occurred in submit. Please verify the data and submit after sometime." or "Submit is in progress. Click here for status". On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed as per the logs that the Petitioner/tax payer tried to file Tran-1 on 04/10/2017, 02/11/2017 & 12/12/2017. However, his ITC ledger was not updated and 'No' ARN generated for the aforesaid attempts. Further, based on the screen shot evidence submitted by the Petitioner/tax payer his case be considered as "Processed with Error". In view of the above, it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

v. WP (C) 26557/2020 M/s Merchem India Pvt. Ltd. V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
32AACCM2015Q1ZL	Kerala	Private Limited Company

Issue: The petitioner/tax payer filed GST TRAN-1 Form on 26.09.2017 on common portal however, he received a message "process with error".

Status: Copy of the writ petition is not available with GSTN, nevertheless, the same was requested from the Commissionerate. GSTN is a party in this matter. The Hon'ble High Court vide its judgment dated 17.12.2020 disposed of the writ petition filed by the petitioner with the direction to ITGRC of GST council to take a call on the petitioners request for transition of Input tax credit in accordance of law,

Technical Analysis: On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed as per the logs that the user first time opened form and filed. During first attempt the reported error was PE (Process with error) for invalid registration for VAT/CENVAT/SVAT no. AACCM2015QXM001, AACCM2015QXM001 VAT/CENVAT has not been added in profile before till date. ITC ledger was also not updated for first attempt. Revision was attempted on 13.09.2017 but taxpayer received error "You have already submitted TRAN 1 Form. So, further Add/Edit/Delete of any Data is not allowed." as Tran-1 for revision was not enabled at that time. In view of the above, it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

Category B1: As per GST System log, there are no evidences of error or submission/filing of TRAN-1

vi. Writ Tax No. 725/2019 M/s V K Brothers V/s. UOI & Others.

GSTIN/ Provisional ID	State	Constitution of Business
09ABBP3161C1ZU	Uttar Pradesh	Proprietorship

Issue: The Petitioner is seeking extension of the time limit for filing of GST TRAN-1 because his application was not entertained on the last date i.e. 27.12.2017 despite making several attempts on the last day the electronic system did not respond.

Status: Copy of the writ petition is not available with GSTN, nevertheless, the same was requested from the Commissionerate. Further, GSTN vide email dated 01.07.2021 apprised the status of case to Joint Commissioner (IT) Commercial Tax HQ, UP in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The Hon'ble High Court vide interim order dated 31.05.2019 directed the Respondents to re-open the portal within two weeks. The Hon'ble High Court further observed that in the event Respondents do not do so, they will entertain the GST Tran-1 of the Petitioner manually and pass order on it after due verification of credits as claimed by the Petitioner. Further, the Hon'ble High Court vide order dated 23.10.2021 allowed the Petition, in view of the reasons contained in the judgment dated 15.09.2021 passed in Writ Tax No. 477 of 2021.

Further investigation by GSTN: An email dated 03.09.2021 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 08.09.2021. No response was received from the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per log, the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger also not updated. The tax payer logged in multiple times with user "gaston2013" on GST portal on 27.12.2017. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

vii. WPA No 13601 of 2021 M/s Premium Fuels V/s. UOI & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
19AALFP8783A1ZT	West Bengal	Partnership

Issue: The Petitioner couldn't make declaration in form GST Tran-1 because of technical glitches on the common portal.

Status: GSTN is a party in this matter. GSTN vide email dated 6.09.2021 apprised the status of case to Kolkata Commissionerate (Centre) in terms of CBIC's Circular No.39/13/2018 dated 03.04.2018. The Hon'ble High court vide order dated 15.11.2021 dismissed the matter with further observation that the dismissal of the writ petition will not prevent the petitioner from making a grievance raised in this writ petition and which the respondent concerned will be bound to dispose of in accordance with law.

Further investigation by GSTN: An email dated 1.12.2021 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 03.12.2021. The Petitioner/tax payer responded vide its mail dated 01.12.2021 with a reference to a Ticket number G-202112016951428 and a copy of screen shot under head "details of transfer of CENVAT credit for registered person

having centralized registration under existing law”. No screen shot evidencing error has been provided by the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per log, the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger also not updated. Taxpayer logged in only on 28.06.2017 with user "premium_2015" on GST portal before 27.12.2017. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

viii. WP No. 1789 of 2021 M/s Shree Govindraj Distribution LLP V/s. UOI & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
27ACZFS2969K1ZY	Maharashtra	Limited Liability Partnership

Issue: The petitioner is seeking to avail the legitimate input tax credit through TRAN-1 as due to technical error he was not able to claim it.

Status: GSTN is a party in this matter. GSTN vide e-mail dated 24.11.2021 apprised the status of case to Aurangabad Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter is pending at pre-admission stage before the Hon'ble High Court (Aurangabad Bench). No effective order passed by the Hon'ble High Court. The next date of hearing is not updated on the court's website.

Further investigation by GSTN: An email dated 24.11.2021 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 26.11.2021. No response was received from the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per log, the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger was also not updated. Taxpayer logged in multiple time before 27.12.2017 with user "govindrajdis_12" on GST portal. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties. Further, it is observed that Taxpayer's GSTIN stands cancelled suo-motu with effect from 01.11.2017.

ix. SCA No. 10652/2020 M/s Shubham Engineering Works V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
24AUTPP0694E1ZA	Gujarat	Proprietorship

Issue: Petitioner tried to file TRAN-1 before 27.12.2021 but could not file it due to the technical issue.

Status: GSTN is a party in this matter. GSTN vide email dated 9.11.2021 apprised the status of case to Ahmedabad Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The

matter is pending adjudication before the Hon'ble High court. There is no effective order passed by the Hon'ble High Court. Next date of hearing is also not available on Court's website.

Further investigation by GSTN: An email dated 24.11.2021 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 26.11.2021. The Petitioner/tax payer replied vide mail dated 25.11.2021 with a copy of Form ST-3, reference to a Grievance ticket No. GA 240319000551K dated 30.03.2019 and copy of GST Certificate. Further, after analysis of the aforesaid ticket No. GA240319000551K, it is noticed the Petitioner/ taxpayer has admitted that due to oversight, he was not able to claim credit. No screen shot evidencing error has been provided by the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per log, the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger was also not updated. Taxpayer logged in multiple time on 27.12.2017 with user "shubham_1340" on GST portal. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

x. Writ Tax 356/2020 M/s Swati Enterprises V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AKJPK7573P1Z6	Uttar Pradesh	Proprietorship

Issue: Petitioner/tax payer was unable to file Form TRAN-1 due to technical problem on GST portal.

Status: GSTN is a party in this matter. Copy of the writ petition is not available with GSTN, nevertheless, the same was requested from the Commissionerate. Further, GSTN vide email dated 17.01.2022 apprised the status of case to Joint Commissioner (IT) Commercial Tax HQ, UP in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. Further, the Hon'ble Allahabad High court vide interim order dated 6.07.2020 directed the respondents to process the manual GST Tran-1 if filed by the taxpayer/petitioner in accordance with law.

Further investigation by GSTN: An email dated 13.01.2022 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 15.1.2022. The Petitioner/tax payer replied vide mail dated 15.1.2022 with a copy of email dated 16.07.2020 & 27.07.2020 respectively addressed to Joint Commissioner, Commercial Tax, Lucknow. The email comprise of reference of Hon'ble Allahabad High court direction vide its order dated 6.07.2020 wherein it has ordered the respondents to allow the process of GST Tran-1 of taxpayer/petitioner. On completion of technical

analysis conducted by GSTN/Infosysit was prima facie observed as per logs that the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger also not updated. The Petitioner/taxpayer logged in multiple time before 27/12/2017 with user "Ramesh_8130" on GST portal. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

xi. WP 24302/2019 M/s Hosamane Precision Products V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
29AAJFH0835K1Z4	Karnataka	Partnership

Issue: Petitioner/tax payer tried to file FORM GST TRAN-1 but couldn't proceed due to technical glitch on the GST Portal.

Status: GSTN is not a party in this matter. GSTN vide email dated 20.01.2022 apprised the status of case to Bengaluru- East Commissionerate 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, on 19.11.2019, with a direction to the Respondent to permit the petitioner to allow filing of declaration in Form GST Tran-1 & Tran-2, so that petitioner may file avail transitional credit.

Further investigation by GSTN: An email dated 14.01.2022 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 17.1.2022. He replied vide mail dated 17.1.2022 with a copy of forwarded e-mail dated 17.01.2022 wherein the reason of non- filing of Tran -1 they have attributed that "server is currently down for maintenance please try after some time". The petitioner/tax payer further stated that no screenshots evidencing any technical error/glitch on portal was taken by the Petitioner since they were unaware that he was required to take screenshots. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per logs the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well. ITC ledger also not updated. The petitioner/taxpayer logged in multiple time before 27.12.2017 with user "hosamanegst" on GST portal. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

xii. WP (Tax) 1032/2018 M/s Mascot Speed Private Limited V/s. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AAICM6336J1Z2	Uttar Pradesh	Private Limited Company

Issue: The petitioner/tax payer tried to file FORM GST TRAN-1 but couldn't proceed due to technical glitch on the GST Portal.

Status: GSTN is not a party in this matter. GSTN vide email dated 22.01.2022 apprised the status of case to Agra Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The Hon'ble High Court vide interim order dated 23.07.2018 directed the Respondents to reopen the portal within two weeks. The Hon'ble High Court further observed that in the event Respondents do not do so, they will entertain the application of the petitioner manually and pass orders on it after due verification of the credits as claimed by the petitioner. The matter has been finally disposed off by the Hon'ble High Court allowing the writ petition in terms of direction passed in Writ Tax No.477 of 2021 vide judgment dated 15.09.2021.

Further investigation by GSTN: An email dated 22.01.2022 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 25.01.2022.No response was received from the Petitioner/tax payer.On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per logs the petitioner/tax payer neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated. The petitioner/taxpayer logged in multiple time before 27.12.2017 with user "mascotspeed1" on GST portal.Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Category B2: Trans-1 Fresh/Revision Attempted with No error or No valid error reported

xiii.Writ Tax No. 560 of 2021 M/s Simplex Control Equipment Co. V/s. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09ABOPD3153E1ZU	Uttar Pradesh	Proprietorship

Issue: The Petitioner/tax payer could not file TRAN-1 due to technical glitches.

Status: GSTN is party in this matter. GSTN vide email dated 11.08.2021 apprised the status of case to Meerut Commissionerate in terms of CBIC's Circular No.39/13/2018 dated 03.04.2018. The matter is pending before Hon'ble Allahabad High Court. There is no effective order available on the High Court's website. Further, the next date of hearing is also not available on the Court's website.

Further Investigation by GSTN: An email dated 11.10. 2021 was sent to the Petitioner /tax payer 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/tax payer was requested to provide the details by 13.10.2021. No response was received by the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys, it was prima facie observed that as per log the Petitioner/tax payer has neither submitted nor filed the Form. No logs of save as well. ITC ledger also not updated. The Petitioner/Taxpayer logged in multiple times with user "gaston2013" on GST portal on 27.12.2017. 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.

xiv.D.B. CW No. 5953/2019M/s Gaston Energy India Private Limited V/s. UOI & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
08AAFCG2824E1ZV	Rajasthan	Private Limited Company

Issue: The Petitioner/taxpayer is aggrieved on account of non-carry forward of Cenvat Credit of Rs.9,58,838/- as on 30.06.2017 as Transitional credit in electronic credit ledger on GST portal, since he was unable to completely revise the requisite return in Form Tran-1 on time due to technical glitch on the GST Portal.

Status: GSTN is a party in this matter. GSTN vide email dated 23.06.2021 apprised the status of case to the CGST Commissionerate (Jaipur) 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 there is no effective order available on the Court's website. Next date of hearing is also not available on Court's website.

Further Investigation by GSTN: An email dated 03.09.2021 was sent to the Petitioner /tax payer requesting 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/tax payer was requested to provide the details by 08.09.2021. He replied vide email dated 08.09.2021 with copies of letters dated 04.09.2017, 27.09.2017 and 31.05.2018 under Subject "Cenvat Credit Taken on Inputs" addressed to the Superintendent GST Jaipur with details of invoices on which input credit was yet to be taken. Further, vide aforesaid mail dated 08.09.2021, the Petitioner/tax payer shared a copy of letter dated 09.10.2018 addressed to the Chief Commissioner, GST Jaipur under subject "request to allow to take the eligible credit of previous regime to the electronic credit ledger" in the light of CBIC Circular No. 39/13/2018 dated 03.04.2018. The O/o Chief Commissioner in response to the aforesaid letter dated 09.10.2018 informed the Petitioner/tax payer vide letter dated 13.12.2018 that the Petitioner/taxpayer's case is not fit for consideration as per the Circular dated 03.04.2018 as the Circular provide for the opening of the portal for such tax payers who tried but were not able to complete TRAN-1 procedure (original or revised) on or before 27.12.2017, but in the Petitioner's case TRAN-1 has been filed successfully. No screen shot evidencing error has been shared by the Petitioner/ tax payer except the copies of aforesaid communications.

On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that, as per logs the Petitioner/tax payer first time filed Form on 12.10.2017. Revision has also been filed on 27.12.2017. ARN generated for both the successful submission and ITC ledger was updated as per claim made by the Petitioner/taxpayer for both the attempts. No error reported in logs. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

xv. Writ Petition (L) 16339/2021 M/s ESS Infra project Pvt. Ltd. V/s. Union of India &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
27AAGCS7146C1ZD	Maharashtra	Private Limited Company

Issue: The petitioner/taxpayer is aggrieved with the issue that they had filed Tran-1 declaration on 28.08.2017 and received system generated acknowledgement, in which the status was shown as filed. However, on verification of the same on 5.09.2017, it is alleged that the same amount has not been credited in their electronic credit ledger, thereafter on 5.09.2017 they had filed Tran-1 second time which was also duly acknowledged by the system but the transitional credit was not reflected on their electronic ledger.

Status: GSTN is a party in this matter. GSTN vide email dated 12.08.2021 apprised the status of case to CGST & CX Mumbai Zone Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter is pending at pre-admission stage. Next date of hearing is not available on High Court's website.

Further Investigation by GSTN: An email dated 01.12.2021 was sent to the Petitioner /tax payer 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/tax payer was requested to provide the details by 03.12.2021. He responded vide mail dated 02.12.2021 explaining that they attempted to file TRAN-1 on 28.08.2017 vide ARN A270817264554Q. On confirming the status on the GST portal, the same appeared as "Filed". However, when the Petitioner/tax payer tried to verify the status of Tran- 1 on 05.09.2017, they observed that the amount of Rs.3381124/-(Rupees Thirty Three Lakh Eighty One Thousand One Hundred Twenty Four Only) was not credited in the electronic ledger. Then, the Petitioner/tax payer once again tried to file Tran-1 on 05.09.2017 and received ARN AA2709170119214. However, the balance of the above transitional credit was not reflected in the electronic credit ledger. The Petitioner /tax payer also shared following screen shot evidencing that he has attempted to file TRAN-1 on 28.08.2017 and 05.09.2017 along with e-mail acknowledgement. Further, he also shared E-mail of ticket raised at GST Helpdesk and follow up with GST helpdesk.

On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed that as per the logs, the Petitioner/tax payer first time opened Form and tried to file however while attempting save/submit the reported error was PE (Process with error) for "Recipient's GSTIN should not be same as that of Registered User's GSTIN". This was a valid functional error. The Petitioner/ Taxpayer has filed Tran-1. Further, Revised Tran-1 was also filed successfully but ITC ledger not updated. ARN received for both the successful attempts.

Further, a WebEx meeting was conducted with the Petitioner/taxpayer (GSTIN 27AAGCS7146C1ZD, Legal Name: ESS INFRAPROJECT PRIVATE LIMITED) on 28.12.2021 at 12 Noon. Mrs Vinitha, Mr. Winston Fernandes, and Adv. Rishabh Jain from Petitioner's side joined the meeting with GSTN technical team (assisted by GSTN-legal team). The purpose of the meeting was to verify the screenshots submitted by the Petitioner/ taxpayer on the issue reported at 19.09.2017 at 09:54 AM in *table 8->transfer of cenvat credit for registered person*. It is observed that the screenshot shared by the Petitioner/tax payer is correct as the said error is also seen in the application logs on 26.08.2017 where the taxpayer has tried to upload same data four times and the system has given valid error message (Recipient's GSTIN should not be same as that of Registered User's GSTIN. Please provide a valid Recipient's GSTIN). Thus the same not being a technical issue of the system, the Petitioner's case may be considered as not having faced any technical difficulties.

Category B6: Tran-1 Filed, eligible for Tran-2. Tran-2 fresh/revision attempted with no error or no valid error reported.

xvi. Writ Tax No 595/2019 M/s Krishna Automobiles Vs. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AJPPS5958P1ZT	Uttar Pradesh	Proprietorship

Issue: The petitioner/tax payer tried to file FORM GST TRAN-2 on the last date i.e. 30.06.2018 but same was not accepted by the portal due to technical glitch which continued throughout the day.

Status: GSTN is a party in this matter. GSTN vide email dated 18.06.2019 apprised the status of case to GST Commissionerate, Noida in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The Hon'ble Allahabad High Court vide its interim order dated 09.05.2019 directed the Respondents to reopen the portal within one month. The Hon'ble High Court further directed that in the event Respondents do not do so, they will entertain the GST TRAN-2 of the petitioner manually and pass orders on it after due verification of the credits as claimed by the petitioner. The matter has been finally disposed off by the Hon'ble Court allowing the writ petition in terms of direction passed in Writ Tax No.477 of 2021 vide judgment dated 15.09.2021.

Further investigation by GSTN: An email dated 14.01.2022 was sent to the Petitioner/tax payer 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 /tax payer was requested to provide the details by 17.1.2022. The Petitioner/tax payer replied vide mail dated 18.01.2022 with a copy of letter dated 01.11.2021 of CGST Office, Bulandshahr addressed to the tax payer whereby he was requested to provide documents related to TRAN-2 verification. The Petitioner/tax payer further explained that all the documents has already been Submitted in Bulandshahr GST Office as against the aforesaid letter dated 01.11.2021 received to him. No documents/screenshot evidencing the error has been provided by the Petitioner/tax payer. On completion of technical analysis conducted by GSTN/Infosys it was prima facie observed as per

logs that the petitioner/tax payer filed Tran-1 successfully on 22.12.2017 along with revision. ARN received for the both the successful submission. ITC ledger also updated. Further, Table 7 & Section 7(b) and table 7(d) value has been declared by the Petitioner/Taxpayer and he was eligible for filing of Tran-2.

Further, as per logs it is also observed the Petitioner/taxpayer tried to file Tran-2 for July 2017 period on 12.03.2018 and record processed successfully, however, the filing was not completed before 30.06.2018 which was the end date for filing of Tran-2. No ARN received for the attempt and ITC ledger was also not updated. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

4. Additional Agenda (Legal issues) for 16th ITGRC

• M/s Futuristic Offshore Services & Chemical Limited

Subject: Transfer of cash ledger balance from Other Notified Person (ONP) category of Registration to Normal category through data fix due to lack of functionality in GST system

GSTIN under ONP Category	GSTIN under Normal Category
2720IND00006ON1	27AAACG1524C2Z8

The present matter of M/s Futuristic Offshore Services & Chemical Limited was received via letters dated 23.03.2021 from GST Policy Wing and CGST & Central Excise Mumbai Zone on 20.04.2021, with a request to provide its comments upon the issue of taxpayer.

M/s Futuristic Offshore Services & Chemical Limited (herein referred as 'The registrant') has taken GST registration under UIN/ONP category (ONP 2720IND00006ON1) mistakenly and deposited amount of Rs.1,36,72,688 in the electronic cash ledger. The ONP category of registration are not required to pay taxes and therefore the functionality of refund of "Excess cash ledger balance" is not enabled for such category. As the registrant is not an ONP and there is no option available for refund of excess cash ledger balance, the amount in Cash ledger remains unutilised and got stuck in the cash ledger. The registrant also has taken new registration under normal category having GSTIN 27AAACG1524C2Z8. The registrant made representations to GST Policy wing and Mumbai West Commissionerate, CGST & CX, Mumbai for allowing refund of the amount lying in the cash ledger balance of the ONP registration. These representations are forwarded to GSTN for consideration and for checking the feasibility of transferring the amount from the existing ONP registration to a new registration number.

In order to provide remedy for the GST applicant, this issue has been analysed and it is found that this issue has arisen due to lack of functionality of refund of excess cash ledger balance for ONP category of registration. Since no option is available in the GST system for seeking remedy, it necessitated performing data fixes through auditable utilities.

For addressing the problem, the feasibility of transferring the cash ledger balance of Rs 1, 36, 72, 688 lying in ONP registration 2720IND00006ON1 to Normal category registration 27AAACG1524C2Z8 has been checked. This issue is treated as a revenue neutral situation as it is a transfer of amount in cash ledger from one type of registration to another type of registration belonging to the same person and hence considered having no financial implication. Accordingly, this is classified under the category of issue "Sl. No. 2 - Technical issue with no financial implications – Correct data known" as approved by ITGRC in its 15th meeting for addressing technical issues through data fixes. Necessary approval was given by SVP (Services) on 21.10.2021 for performing

the data fix and the cash ledger balance of Rs.1,36,72, 688 was transferred from ONP registration 2720IND00006ON1 to Normal category registration 27AAACG1524C2Z8.

- **M/s Alstone International**

Sub: Representation received from M/s ALSTONE INTERNATIONAL (GSTIN: 36AANFA5890R1ZH) regarding opening of TRAN-1 portal

GSTIN	State	Constitution of Business
36AANFA5890R1ZH	Telangana	Partnership

The present matter of M/s Alstone International GSTIN 36AANFA5890R1ZH has not been placed before ITGRC as the same was not received by GSTN in accordance with CBIC's Circular No. 39/13/2018 dated 3.4.2018. The aforesaid matter has been received by GSTN vide mail dated 20.07.2021 from Commercial Tax Department (Telangana) forwarding the representation of the Tax payer under subject "regarding opening of TRAN-1" along with the Hon'ble High Court at Delhi's order dated 27.05.2021 passed in WP(C) No.3760 of 2020 titled M/s Alstone International Vs. UOI and Ors. Accordingly, this GSTIN 36AANFA5890R1ZH has been included for technical analysis for the purpose of ITGRC investigation.

GSTN vide email dated 06.09.2021 has communicated to Commercial Tax Department Government of Telangana apprising the initiation of technical analysis in the matter in terms of CBIC's Circular No. 39/13/2018 dated 3.4.2018. Further, vide aforesaid e-mail dated 06.09.2021 GSTN apprised that in its 11th meeting it was decided by ITGRC that once any Court's order has been accepted by the jurisdictional authority and has attained finality, it needs to be communicated in writing to GSTN with the approval of the competent authority of Centre/ State Tax to implement that order. On receiving of the communication from the jurisdictional field formation with the approval of the Commissioner of State Tax, GSTN will take action for compliance of the Court's order for opening of the portal for the said taxpayer. However, the jurisdictional tax authority needs to verify the correctness and eligibility of the said transitional credit claimed by the taxpayers as per provisions of CGST Act 2017 and the rules thereof and to take appropriate remedial action, if required. The said decision was communicated vide OM no. 266/11th ITGRC/GSTC/2020(Part-1)/2909 dated 17.06.2020 (copy attached).

In view of the above, GSTN vide aforesaid mail date 06.09.2021 has requested Commercial Tax department to check as to whether the facts stated by the taxpayer are correct and confirm to GSTN in writing with respect to further action required to be taken by GSTN. However, GSTN has not received any reply/communication from the Department's end.

On completion of technical analysis conducted by GSTN/Infosys, it has been prima facie observed that as per logs the Petitioner/tax payer neither submitted nor filed the Form. No logs of save as well, ITC ledger also not updated. The Petitioner/taxpayer logged in multiple times with user "gaston2013" on GST portal on 27.12. 2017. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties under the category B-1.

5. Agenda on Return Module Cases presented for review before 16th ITGRC

i. One day late fee waiver for August-2021 period GSTR-3B late filing due to payment issue with RBI

Brief Issue:

On 20th Sep, 2021 some of the taxpayers could not file their GSTR-3B return on GST portal due to payment issue in NEFT/RTGS payment mode. Some of taxpayers had paid the amount to the respective bank through NEFT/RTGS but the same was not credited into their Cash Ledger.

2. As the payment for the month of August-2021 was comparatively low hence on investigation it was observed that CPIN notification for NEFT/RTGS payment were not being received from RBI end. An immediate action was taken by GSTN and on further analysing, it was identified that the issue arose due to some technical issue at Reserve Bank of India end and the same was communicated instantly to RBI on 20th Sep at 03:00 PM.

3. Reserve Bank of India accepted that there was a network issue at RBI end due to DC/DR drill held by RBI on 19th Sep, 2021 and due to this the GSTN's inbound traffic was not white listed (*allowed as coming from trusted source*) on RBI System. GSTN actively followed up the matter with RBI and the issue could be resolved by around 07:20 PM on 20th Sep, 2021. However, as there was a huge pending transactions in the queue, the Electronic Cash Ledger data for all affected taxpayer could be updated by 21st Sep, 2021 only.

4. On account of this technical issues at the end of RBI, transaction success, which also included the CIN (*Challan Identification Number*) details could not be transmitted to the GSTN's System till around 07:20 PM on 20th Sept. 2021. This issue was faced for all NEFT/RTGS transactions. As per the defined process, after receipt of successful transaction along with CIN (*Challan Identification Number*) data from RBI, the Electronic Cash Ledger is updated on GST System. Consequently, the amount was debited from taxpayer's bank account but the same was not updated in the *Electronic Cash Ledger* of the taxpayers.

5. Since the Electronic Cash Ledger was not updated even after deducting money from taxpayer's bank account, it is likely that the taxpayers, for whom CPIN notifications were received after 07:00 PM on 20th Sep, 2021 were unable to file GSTR-3B on time.

6. There was no prior communication by RBI regarding white listing 11 series IP along with 13 series IP addresses. Also RBI could not monitor their CPIN notification failures to GST Portal.

7. Once the issue was identified, the same was brought to the notice of the Government. In view of the genuine issue of the affected taxpayers, the Government announced that it would consider waiving the *Late fees* and *Interest*, for the affected period of **one** day.

8. On analysing the data, 77,074 such taxpayer were identified, who were affected due to this technical glitch and such taxpayers need to be given relief of *Late fees* and *Interest* for **one** day.

GSTN Proposal:

- c. It is proposed to provide one day late fee waiver relief for above taxpayers for late filing of GSTR-3B of August-2021 period by re-crediting one day's late fee to their electronic cash ledger.
- d. Suitable action for waiver of interest for one day may also be recommended & placed before the GST Council.

Accordingly, the agenda is placed before IT-GRC for discussion & decision.

ii. **Reset of submitted GSTR-1 for M/s Vodafone Idea Ltd. (GSTIN:10AAACB2100P1ZC)**

Brief Issue:

M/s Vodafone Idea limited bearing GSTIN 10AAACB2100P1ZC requested on 08th Oct, 2021 that they had inadvertently submitted their Sep-2021 GSTR-1 as *NIL* while they have liability to declare in that month. M/s Vodafone Idea limited requested to bring their GSTR-1 status back to *Not Submitted/Saved* from *Submitted* so that they can file their GSTR-1 with correct data. The said GSTR-1 was only *Submitted* and not *Filed*.

The issue was analysed and it was found that the:

1. GSTR-1 was in Submitted stage only and not Filed.
2. No record/invoice was added/saved in GSTR-1.

Hence, to ensure that correct liabilities are reported in GSTR-1, actual liabilities are auto-populated in GSTR-3B and tax is correctly paid in GSTR-3B, the status of GSTR-1 of M/s Vodafone Idea limited bearing GSTIN 10AAACB2100P1ZC was reverted back to *Saved* from *Submitted* on 11.10.2021.

6. Agenda on Data Fix issues

Technical issues requiring data fix of the processed incorrect data through backend utilities

As per the decision of 15th ITGRC meeting, held on 12/08/2021, GSTN has initiated fixing of technical issues identified, as per the SOP approved by the ITGRC.

The below process has been followed in remediating the data fixes:

- Analysis of data discrepancy.
- Confirmation of discrepancy sought from MSP.
- Upon confirmation, utility created by MSP to extract similar cases from GST System data.
- A root cause analysis conducted to fix the issue and implemented by MSP in consultation with GSTN to rectify data inconsistency.
- Scripts created for data fix and tested in multiple cycles by MSP and GSTN.
- Approval note presented to competent authority to fix the issue.
- After approval, audit entries created for each change affecting the data.
- Scripts executed and post execution state of data stored for reference later.

The list of data fixes implemented is presented to ITGRC for review/approval as below. There is no case of global data fix requiring prior approval of ITGRC.

S. No	Issue reported	Approved By	Date of Approval	Date Intimate MSP to perform Data Fix	Issue Description with No. of Cases Impacted	Financial Implication
1	The end user is unable to file GST CMP-08 as error is reflecting "Data for the internal Transaction Id Already Posted" – RQM: 21266	Sh. Dheeraj Rastogi	11-08-21	12-08-21	<p>After filing CMP-08 four taxpayers had reported the status of the Form is being shown as Not Filed for the tax period prior to June 2021.</p> <p>This is due to improper handling of transactions in CMP 08 form where partial transaction was saved. As partial transaction was saved, the status remained as Ready to File (RTF) instead of file. Also the records was posted in the cash ledger.</p> <p>The utility was run to change the status from ready to file to Filed for the 4 taxpayers. The permanent code fix has been released to production on 14th Jun'21.</p>	No
2	Extension given for filing various forms including Form GST ITC-01, as a COVID Relief measure; error in filing ITC-01 by some taxpayers – RQM: 21035	Sh. Dheeraj Rastogi	31-08-21	31-08-21	<p>Few taxpayers had raised ticket on GST Helpdesk that they were unable to File ITC-01 to claim ITC on the stock after taking new registration or after withdrawal from Composition scheme.</p> <p>During COVID period, Government inter-alia, had extended the period of filing the said form to 30th June, 2021 for those statements which had become due for filing between 15th April to 29th June, 2021, vide Notification no. 24/2021 dated</p>	No

					<p>01-06-2021.</p> <p>After updating of due date to 30th June 2021 for ITC-01, the taxpayers were not able to file ITC-01 between 1st to 7th July 2021 as the due date for those taxpayers also got updated to 30th June 2021.</p> <p>On investigation, it was found that 156 taxpayers have attempted to file but could not file ITC-01 due to defect in the system application.</p> <p>This issue was fixed vide Emergency Change Request no. 13010 on 7th July 2021.</p> <p>One week extension of due date was provided to all such taxpayers to file ITC-01.</p>	
3	Negative balance is appearing in the credit ledger of a taxpayer.	Sh. Dheeraj Rastogi	05-11-21	06-11-21	<p>Due to defect in the system application, data saved in Big Data Store-HBase and Ledgers for GSTR3B Form were different for one taxpayer [GSTIN: 37AAECH3295B1ZP] and the ITC ledger reported excess ITC Credit. In order to correct the excess ITC credit, the GST System had posted the entry to recover the excess ITC credit. Meanwhile the taxpayer had already paid this ITC Credit through DRC-03 and logged Ticket at helpdesk to reverse the credit.</p> <p>The credit was reversed as the taxpayer had already paid through DRC-03.</p>	Yes
4	CMP08 - Few taxpayers (91 cases) are unable to file return as there are open liabilities due to rollback issues	Sh. Vashishth a Chaudhary	10-11-21	10-11-21	<p>Due to defect in the system application, filing process of statement by composition taxpayer (CMP-08) could not be completed. The correct entries in the relevant liability ledger tables and Cash Ledger were posted by a utility so that their filing process could be</p>	Yes

					completed and the taxpayer can file the return/statement for the subsequent tax period. This issue has been fixed on 9th July 2021. Taxpayers impacted - 91	
5	Amount not credited to cash ledger on filing of GSTR-2X (TDS/TCS credit received form)	Sh. Vashishth a Chaudhary	10-12-21	10-12-21	After filing GSTR2X form, the amount was not credited to the cash ledger due to defect in the system application software for one taxpayer . The amount had been credited to cash ledger on the basis of GSTR-2X of the relevant tax period. The issue has been fixed on 17th Dec 2021 .	Yes
6	As per the CGST Act, Section 170 only integer values should be reported in the Cash Ledger. Due to defect in the GST System, there were decimal values present which has been cleaned off.	Sh. Dheeraj Rastogi	29-09-21	01-10-21	During the initial phase of GST implementation, taxpayers were allowed to make debit in cash ledger in decimal values also. Later on, it was restricted to whole number for all the ledger transactions. As a result, the Cash Balance has retained such decimals values which cannot be used in any ways The data has been rounded off to the nearest integer for 8187 taxpayers and the impact of rounding off was Rs 1013.02 p	Yes
7	ISD invoices are not reflecting in GSTR2A form when uploaded from GSTR6 form.	Sh. Dheeraj Rastogi	25-01-22	25-01-22	ISD invoices are not reflecting in GSTR2A form when uploaded from GSTR6 form. This is happening only for taxpayers, who are using the GSTR6 offline tool to upload ISD invoices. After uploading from Offline Tool, the ITC is distributed to other GSTINs basis the same PAN. There was defect in the system that the Credit distributed would only happen for one GSTIN and ignored the other GSTIN.	No

					A data fix was done to correct the data for 72 ISD users . This issue has been fixed on 31st Jan 2022	
8	Request to transfer the amount in the Cash Ledger from Temporary ID to the regular GSTIN of taxpayer.	Sh. Dheeraj Rastogi	13-01-22	14-01-22	Three taxpayers had deposited tax amount on Temporary Advance Ruling ID where as they had regular GSTINs (08JHBPk5226B1ZL , 08JEIPS2409C1ZF and 08BKQPA2467N1ZN). On request from GCST Jodhpur Commissionerate, the amount in the Advance Ruling ID was transferred to their regular GSTINs in their respective cash ledger. This issue was fixed on 18 th Jan 2022.	No
9	Form GST ITC-03- Taxpayers who had opted in for Composition scheme to reverse the ITC. Due to defect in the GST System, after filing ITC-03 the amount was not debited from the Ledger.	Sh Vashishth a Chaudhar y	10-12-21	10-12-21	<p>The normal taxpayers after opting to pay tax under composition scheme have to surrender ITC availed on stock through Form GST ITC-03 since composition taxpayers are not entitled to claim credit. Due to technical issue in the system application software, 131 taxpayers have reported liability but debit could not be made in credit/ cash ledger, though filing of the said form had happened and ARN was generated.</p> <p>To recover the amount due, the aforesaid form had to be reset to enable the 131 taxpayers to file again and pay the liability declared. The issue has been fixed on 25th January, 2022.</p>	Yes

10	Cash balance correction due to credit and debit happened simultaneously	Sh. Vashishtha Chaudhary	10-11-21	12-11-21	<p>In a rare event, the transaction of debit from GSTR3B and CIN (credit) record happened concurrently. Due to dirty read, the credit entry did not update the cash ledger Balance. Consequently, the debit entry read the preceding balance, without reading the credit entry in the cash Ledger.</p> <p>Ticket no. 6415257 was logged for this issue by the taxpayer with GSTIN: 27ATNPK9574H1ZY.</p> <p>The data fix in the cash ledger has been done on 16/11/2021.</p>	Yes
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ANNEXURE-3

GSTN Goods And Services Tax Network

TRAN-1/TRAN-2, Data Fix & Other Cases - Being Presented before 16th ITGRC

- 3rd March 2022

**Dheeraj Rastogi, EVP (Support) &
SVP (Services), GSTN.**

E-mail: dheeraj.rastogi@gstn.org.in



Overview of the 16th ITGRC Agenda



The following Agenda Items are being submitted for Decision/Review by the 16th ITGRC

Sr. No.		No. of Cases for Decision/Review	Remarks
1	TRAN 1/ TRAN 2 – Nodal cases (Annexure - 1)	4	Presenting 4 case for directions on further processing.
2	TRAN 1/ TRAN 2 – Court cases (Annexure - 2)	16	All cases submitted for decision by the ITGRC
3	Additional Agenda – Legal issues	2	Presented for review by the ITGRC
4	Return Module cases	2	Presented for review by the ITGRC
5	Data Fix issues	10 Issues	Presented for review by the ITGRC



TRAN-1 Cases received from Nodal Officers - Presented for review by the ITGRC

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	06	44	0	50
11	11 th ITGRC Meeting	246	11	0	257
12	12 th ITGRC Meeting	102	02	0	104
13	13 th ITGRC Meeting	43	04	0	47
14	14 th ITGRC Meeting	40	03	0	43
15	15 th ITGRC Meeting	03	01	0	04
16	16 th ITGRC Meeting (being presented)	04	0	0	04
Total		3057	232	18	3307

Nodal Cases forwarded to GSTN for processing after due date - Presented for review by the ITGRC



Cases forwarded to GSTN for processing after expiry of extended due date i. e. 31/08/2020.- (Annexure – 1)

Maharashtra State IT Redressal officer, Mumbai has requested GSTN for processing of below mentioned two cases in email dated 21/09/2021. An email was also received from the O/o Commissioner of State Tax Maharashtra on 20/10/2021 with a request to process and treat the cases under reference as an exception. These cases were submitted to them in time by the taxpayers but they forwarded to GSTN on 21/09/2021, much beyond the extended date of 31/08/2020. The details pertaining to this matter are given in the attached Annexure- 1 for consideration and decision of ITGRC.

Sr. No.	GSTIN/ Provisional Id	Legal Name	Date receipt of Nodal Officer	Date receipt of GSTN	State
1	27AAACP2803P1Z9	Pradman Engineering Services P. Ltd.	09/12/2019	21/09/2021	Maharashtra
2	27AAACK6569R1ZN	KAISER-E-HIND PVT. LTD	09/12/2019	21/09/2021	Maharashtra

Nodal Case forwarded to GSTN for re-processing - Presented for review by the ITGRC



Case forwarded to GSTN for re-processing which is already approved by ITGRC in its earlier meetings.- (Annexure – 1)

- The West Bengal Nodal Officer had forwarded to GSTN the TRAN-1 case of M/s Shree Darshan Packagers Pvt Ltd., GSTIN 19AADCS5359J1ZV. in January 2019.
- Presented to 5th ITGRC and the case was approved.
- Taxpayer filed form on 18/03/2019 but only balance of VAT Credit updated in ITC Ledger.
- The balance of CENVAT is not credited, apparently due to non updating of registration details by the Taxpayer. The taxpayer is reported to have unsuccessfully tried amending registration details in TRAN-1 by inserting Central Excise Registration Number on 29.05.2019.
- The case was again forwarded to GSTN on 14th February 2020 for processing and presenting to ITGRC but it was returned on 22/02/2020 as the ITGRC had already approved this case.
- The jurisdictional Nodal officer is now insisting for reprocessing of this case on the ground that in 6th ITGRC and 9th ITGRC, this type of issues are duly allowed.

TRAN-1/TRAN-2 Court Cases - Presented for decision by the ITGRC

Summary of Court Cases being presented before 16th ITGRC

Sl. No.	ITGRC Meeting	TRAN-1	TRAN-2	Migration	Refund	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	10	1	-		11
16	16 th ITGRC Meeting (Being Presented)	16	1	0	1	18
Total		496	12	2	1	511

Summary of Court Cases being presented before 16th ITGRC



TRAN-1/TRAN-2 Cases reported as having Technical Glitch (Annexure -2)

Sub Category	Sub Category Description	Cases received as Court Cases
A-1	Processed with Error	5 (S. No 1 – 5 TRAN-1 Cases of Annexure 2)
	Sub Total	5

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.	7 (Sl. No 6 to 12 of Annexure 2)
B-2	Trans-1 Fresh/Revision Attempted with No error or No valid error reported.	1 (Sl. No 13 of Annexure 2)
B-3	Cases in which TRAN 1 have been filed successfully as per logs with no valid error reported.	2 (Sl. No 14 & 15 of Annexure 2)
B-6	Trans-1 Filed, Eligible for Tran-2.Trans-2 Fresh/Revision Attempted with No error or No valid error reported	1 (Sl. No. 16 TRAN-2, Annexure-2)
	Sub Total	11

TRAN-1 Court cases having technical glitch



Category A1: Processed with error

1) WP(C) No. 2238 /2021 Delhi Wax Refinery V/s. UOI & Ors

Issue: Despite making several efforts the petitioner/tax payer was unable to log in to the portal as it repeatedly showed either a "Network Error" or the "Site cannot be reached".

Status: GSTN vide email dated 3.09.2021 shared the comments in the matter and also 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 25.04.2022. No effective order is available on the Court's website.

Technical Analysis - As per the logs that the Petitioner/tax payer first time opened Form and tried to file, however while attempting to save/submit, the reported error was PE (Process with error) for invalid registration for VAT/CENVAT/SVAT No. AAKPR8160NEI002. This VAT/CENVAT has not been added in profile till date. ITC ledger not updated and ARN also not generated. Revision was also not attempted. From the above it can be deduced that the Petitioner/tax payer faced technical glitches while filing TRAN-1.

GSTIN/ Prov. ID	State	Constitution of Business
07AAKPR8160N1ZY	Delhi	Proprietorship

TRAN-1 Court cases having technical glitch

2) WP No. 4929 of 2021 M/s Maso Automotive Pvt. Ltd V/s. UOI and Ors.

Issue: Petitioner filed TRAN-1 on 10.07.2017 for transfer of CENVAT balance in GST provisions. However, due to technical problems in the portal the amount was not transferred in GST ledger.

Status: GSTN vide email dated 02.11.2021 apprised the status of case to Aurangabad Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The Hon'ble High Court vide order dated 04.01.2020 disposed of the matter with a direction to the Petitioner/tax payer to approach the ITGRC through proper channel with the grievance as raised in the petition and same to be considered by the committee in accordance with law and procedure.

Technical Analysis: As per the logs that the Petitioner/tax payer first time opened Form and filed on the portal. During first attempt the reported error was PE (Process with error) for invalid registration for VAT/CENVAT/SVAT No. ADMPA3442KST001/27390006475. Further, ADMPA3442KST001/ 27390006475 VAT/CENVAT has not been added in profile till date. ITC ledger was updated for first attempt. Revision was also not attempted.

GSTIN/ Provisional ID	State	Constitution of Business
27AAACM4255C1ZT	Maharashtra	Private Limited Company

TRAN-1 Court cases having technical glitch

3) WP (T) 834/2021 Muvtons Castors Pvt Ltd V/s. UOI & Ors

Issue: The Petitioner/tax payer seeks to avail the legitimate input tax credit through TRAN-1 as due to technical error he was not able to claim it.

Status: GSTN vide email dated 17.11.2021 apprised the status of case to the concerned Commissionerate, Uttar Pradesh in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter has been disposed of by the Hon'ble High Court vide order dated 05.10.2021 allowing the writ petition.

Technical Analysis: As per the logs the Petitioner/tax payer first time opened Form and tried to file but during first attempt the reported error was PE (Process with error) for invalid registration for VAT/CENVAT/SVAT No. AADCM2916KEM001. Further, AADCM2916KEM001 VAT/CENVAT has not been added in profile before the end date of filing Tran-1 i.e. 27.12.2017. Also the Petitioner/taxpayer tried to claim ITC on his own GSTIN 09AADCM2916K1ZB which was a wrong way of claiming credit. ITC ledger was not updated for first attempt. Revision was also not attempted.

GSTIN/ Provisional ID	State	Constitution of Business
09AADCM2916K1ZB	Uttar Pradesh	Private Limited Company

TRAN-1 Court cases having technical glitch



4) W.P.(C)) 518 of 2021 M/s JR Soods & Company Ltd V/s. Union of India in the Hon'ble High Court of Delhi

Issue: The Petitioner/tax payer failed to file Tran-1 Form due to Technical glitch on the portal.

Status: GSTN vide mail dated 28.06.2021 shared the comments with GST Delhi East Commissionerate in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble Delhi High Court and there is no effective order passed in the matter. The next date of hearing in this matter is 04.02.2022.

Technical analysis : An email dated 03.09.2021 was sent to the Petitioner requesting the following information:-

Exact technical glitch faced by you while filing TRAN-1

Nature of error noticed

Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner/tax payer was requested to provide the details by 8.09.2021. The Petitioner/tax payer replied vide email dated 07.09.2021 with screen shot dated 08.12.2017 of the GST system dashboard explaining that every time they tried filing their TRAN-1 both for Delhi and Haryana, the portal flashed a message again and again "Error occurred in submit. Please verify the data and submit after sometime." or "Submit is in progress. Click here for status". As per the logs that the Petitioner/tax payer tried to file Tran-1 on 04/10/2017, 02/11/2017 & 12/12/2017. However, his ITC ledger was not updated and 'No' ARN generated for the aforesaid attempts. Further, based on the screen shot evidence submitted by the Petitioner/tax payer his case be considered as "Processed with Error".

GSTIN/ Provisional ID	State	Constitution of Business
07AACC6759K1Z5	Delhi	Private Limited Company

TRAN-1 Court cases having technical glitch



5) WP (C) 26557/2020 M/s Merchem India Pvt. Ltd. V/s. UOI and Ors.

Issue: The petitioner/tax payer filed GST TRAN-1 Form on 26.09.2017 on common portal however, he received a message "process with error".

Status: The Hon'ble High Court vide its judgement dated 17.12.2020 disposed of the writ petition filed by the petitioner with the direction to ITGRC of GST council to take a call on the petitioners request for transition of Input tax credit in accordance of law.

Technical Analysis: As per the logs the user first time opened form and filed. During first attempt the reported error was PE (Process with error) for invalid registration for VAT/CENVAT/SVAT no. AACCM2015QXM001, AACCM2015QXM001 VAT/CENVAT has not been added in profile before till date. ITC ledger was also not updated for first attempt. Revision was attempted on 13.09.2017 but taxpayer received error "You have already submitted TRAN 1 Form. So, further Add/Edit/Delete of any Data is not allowed." as Tran-1 for revision was not enabled at that time.

GSTIN/ Provisional ID	State	Constitution of Business
32AACCM2015Q1ZL	Kerala	Private Limited Company

Additional Agenda (Legal) - Presented for decision by the ITGRC

Additional Agenda – Cases being presented before 16th ITGRC



Sub Category	Sub Category Description	Cases received as representation from Commissionerate/GST Council/Policy Wing
Refund	Transfer of cash ledger balance from Other Notified Person (ONP) category of Registration to Normal category through data fix due to lack of functionality in GST system	1
B 1 (Tran-1)	As per GST system log, there are no evidences of error or submission/filing of TRAN1. with Error	1
	Sub Total	2

Additional Agenda – Refund Case



Transfer of cash ledger balance from Other Notified Person (ONP) category of Registration to Normal category through data fix due

M/s Futuristic Offshore Services & Chemical Limited mistakenly took registration under UIN/ONP category (ONP 2720IND00006ON1) and deposited amount of Rs.1,36,72,688 in the ECL.

The ONP category of registration are not required to pay taxes and therefore the functionality of refund of "Excess cash ledger balance" is not enabled for such category.

The registrant also has taken new registration under normal category having GSTIN 27AAACG1524C2Z8. The registrant made representations to GST Policy wing and Mumbai West Commissionerate, CGST & CX, Mumbai for allowing refund of the amount lying in the cash ledger balance of the ONP registration.

The feasibility of transferring the cash ledger balance of Rs 1, 36, 72, 688 lying in ONP registration 2720IND00006ON1 to Normal category registration 27AAACG1524C2Z8 was checked. This issue is a revenue neutral situation.

Necessary approval was given by SVP (Services) on 21.10.2021 for performing the data fix and the cash ledger balance of Rs.1,36,72, 688 was transferred from ONP registration 2720IND00006ON1 to Normal category registration 27AAACG1524C2Z8.

Additional Agenda – TRAN-1 Case



Representation for opening of form TRAN-1 - M/s ALSTONE INTERNATIONAL

The case of M/s Alstone International, GSTIN 36AANFA5890R1ZH, was received in mail dated 20.07.2021 from CTD (Telangana) along with the representation of the Tax payer regarding opening of TRAN-1 and the Hon'ble High Court at Delhi's order dated 27.05.2021 passed in WP(C) No.3760 of 2020- M/s Alstone International Vs. UOI and Ors.

The WP was filed in respect of GSTIN- 07AANFA5890R1ZI for the Delhi State only, claiming the credit amounting to Rs. 1,12,79,082 on the stock lying as on 30.06.2017 for twelve different branch locations including Telangana. The Hon'ble Delhi High Court vide a common order dated 27.05.2021 for a batch matter allowed the writ petition directing the Respondents to reopen the online portal so as to enable the Petitioner to file TRAN-1 Form electronically or to accept the same manually on or before 30th June, 2021. Accordingly, the case of the Petitioner/tax payer (GSTIN 07AANFA5890R1ZI) was presented before the 13th ITGRC but this case falling under Category B-1 was not approved.

GSTN vide mail date 06.09.2021 had apprised the CTD (Telangana) of the directions of 11th meeting that once any Court's order has been accepted by the jurisdictional authority and has attained finality, the competent authority of Centre/ State Tax needs to confirm in writing to GSTN to implement that order. They were also requested to verify the facts stated by the taxpayer. However, GSTN has not received any reply/communication from them till date.

As per technical analysis of logs, the Petitioner/tax payer 'neither submitted nor filed the Form. No logs of save as well, ITC ledger also not updated. The Petitioner/taxpayer logged in multiple times with user "gaston2013" on GST portal on 27.12. 2017'. Thus, the Petitioner's case may be considered as not having faced any technical difficulties under the category B-1

Returns Module Cases - Presented for decision by the ITGRC

Returns Module Case being presented for review by the ITGRC



One day late fee waiver for August-2021 period GSTR-3B late filing due to payment issue with RBI

Brief Issue:

On 20th Sep, 2021 some of the taxpayers could not file their GSTR-3B return on GST portal due to payment issue in NEFT/RTGS payment mode. Some of taxpayers had paid the amount to the respective bank through NEFT/RTGS but the same was not credited into their Cash Ledger.

2. An immediate action was taken on same day by GSTN and it was identified that there was technical issue (change in whitelisting of IP addresses) at Reserve Bank of India end and it was communicated instantly to RBI.

3. This issue was faced for all NEFT/RTGS transactions. The amount was debited from taxpayer's bank account but the same was not updated in the Electronic Cash Ledger of the taxpayers. In view of the genuine issue of the affected taxpayers, the Government announced that it would consider waving the Late fees and Interest, for the affected period of one day.

4. On analysing the data, 77,074 such taxpayer were identified who were affected due to this technical glitch and such taxpayers need to be given relief of Late fees and Interest for one day.

5. Suitable action for waiver of interest for one day may also be recommended & placed before the GST Council.

Reset of submitted GSTR-1 for M/s Vodafone Idea Ltd.

Brief Issue:

M/s Vodafone Idea limited, GSTIN 10AACB2100P1ZC, informed on 08th October 2021 that they had inadvertently submitted their September 2021 GSTR-1 as *NIL* though they had liability to declare in that month. M/s Vodafone Idea limited requested for reset of GSTR-1 status back to *Not Submitted/Saved* from *Submitted* to enable them to file their GSTR-1 with correct data.

The issue was analysed and it was found that:

1. The GSTR-1 was in Submitted stage only and not Filed.
2. No record/invoice was added/saved in GSTR-1.

In order to enable the taxpayer to declare correct liabilities in GSTR-1, the status of their GSTR-1 was reset from *Submitted* to *Saved* on 11.10.2021.



Reset of submitted GSTR-1 for M/s Vodafone Idea Ltd.

Brief Issue:

M/s Vodafone Idea limited, GSTIN 10AACB2100P1ZC, informed on 08th October 2021 that they had inadvertently submitted their September 2021 GSTR-1 as *NIL* though they had liability to declare in that month. M/s Vodafone Idea limited requested for reset of GSTR-1 status back to *Not Submitted/Saved* from *Submitted* to enable them to file their GSTR-1 with correct data.

The issue was analysed and it was found that:

1. The GSTR-1 was in Submitted stage only and not Filed.
2. No record/invoice was added/saved in GSTR-1.

In order to enable the taxpayer to declare correct liabilities in GSTR-1, the status of their GSTR-1 was reset from *Submitted* to *Saved* on 11.10.2021.



Data Fix Issues – Being presented for Review before 16th ITGRC

1 : User Unable to file GST CMP08



Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
The end user is unable to file GST CMP-08 as error is reflecting "Data for the internal Transaction Id Already Posted"- RQM: 21266	12-08-21	<p>After filing CMP-08 four taxpayers had reported the status of the Form is being shown as Not Filed for the tax period prior to June 2021.</p> <p>This is due to improper handling of transactions in CMP 08 form where partial transaction was saved but the status remained as Ready to File (RTF) instead of Filed indicating that Return was not filed although the records was posted in the cash ledger also. The utility was run to change the status from ready to file to Filed for the 4 taxpayers.</p> <p>The permanent code fix has been released to production on 14th Jun'21.</p> <p>Financial Implication : No Taxpayers Impacted – 04</p>

2 : Extension Given for Filing Various Forms including Form GST ITC-01

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Extension given for filing various forms including Form GST ITC-01, as a COVID Relief measure; error in filing ITC-01 by some taxpayers – RQM: 21035	31-08-21	<p>Few taxpayers had raised ticket on GST Helpdesk that they were unable to File ITC-01 to claim ITC on the stock after taking new registration or after withdrawal from Composition scheme.</p> <p>During COVID period, Government inter-alia, had extended the period of filing the said form to 30th June, 2021 for those statements which had become due for filing between 15th April to 29th June, 2021, vide Notification no. 24/2021 dated 01-06-2021.</p> <p>After updating of due date to 30th June 2021 for ITC-01, the taxpayers were not able to file ITC-01 between 1st to 7th July 2021 as the due date for those taxpayers also got updated to 30th June 2021.</p> <p>On investigation, it was found that 156 taxpayers have attempted to file but could not file ITC-01 due to defect in the system application. This issue was fixed vide Emergency Change Request no. 13010 on 7th July 2021.</p> <p>One week extension of due date was provided to all such taxpayers to file ITC-01.</p> <p>Financial Implication : No</p> <p>Taxpayers Impacted – 156</p>

3 : Negative Balance Appearing in the Credit Ledger of Taxpayer

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Negative balance is appearing in the credit ledger of a taxpayer.	06-11-21	<p>Due to defect in the system application, data saved in Big Data Store-HBase and Ledgers for GSTR3B Form were different for one taxpayer [GSTIN: 37AAECH3295B1ZP] and the ITC ledger reported excess ITC Credit. In order to correct the excess ITC credit, the GST System had posted the entry to recover the excess ITC credit. Meanwhile the taxpayer had already paid this ITC Credit through DRC-03 and logged Ticket at helpdesk to reverse the credit.</p> <p>The credit was reversed as the taxpayer had already paid through DRC-03.</p> <p>Financial Implication : Yes</p> <p>Taxpayers Impacted – 01</p>

4 : Taxpayers Unable to File CMP08



Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
CMP08 - Few taxpayers (91 cases) are unable to file return as there are open liabilities due to rollback issues	10-11-21	<p>Due to defect in the system application, filing process of statement by composition taxpayer (CMP-08) could not be completed. The correct entries in the relevant liability ledger tables and Cash Ledger for earlier period were posted by a utility so that their filing process could be completed and the taxpayer can file the return/statement for the subsequent tax period. This issue has been fixed on 9th July 2021.</p> <p>Financial Implication : Yes</p> <p>Taxpayers Impacted – 91</p>

5 : Amount of Credited to Cash Ledger on Filing GSTR-2X



Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Amount not credited to cash ledger on filing of GSTR-2X (TDS/TCS credit received form)	10-12-21	<p>After filing GSTR2X form, the amount was not credited to the cash ledger due to defect in the system application software for one taxpayer. The amount has been credited to cash ledger on the basis of GSTR-2X of the relevant tax period.</p> <p>The issue has been fixed on 17th Dec 2021.</p> <p>Financial Implication : Yes</p> <p>Taxpayers Impacted – 01</p>

6 : Decimal Values Reported in Cash Ledger



Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
As per the CGST Act, Section 170 only integer values should be reported in the Cash Ledger. Due to defect in the GST System, there were decimal values present which has been cleaned off.	01-10-21	<p>During the initial phase of GST implementation, taxpayers were allowed to make debit in cash ledger in decimal values also. Later on, it was restricted to whole number for all the ledger transactions. As a result, the Cash Balance has retained such decimals values which cannot be used in any ways</p> <p>The data has been rounded off to the nearest integer for 8187 taxpayers and the impact of rounding off was Rs 1013.02 p</p> <p>Financial Implication : Yes</p> <p>Taxpayers Impacted – 8187</p>

7 : ISD Invoices not reflecting in GSTR2A Form



Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
ISD invoices are not reflecting in GSTR2A form when uploaded from GSTR6 form.	25-01-22	<p>ISD invoices are not reflecting in GSTR2A form when uploaded from GSTR6 form.</p> <p>This is happening only for taxpayers, who are using the GSTR6 offline tool to upload ISD invoices. After uploading from Offline Tool, the ITC is distributed to other GSTINs basis the same PAN. There was defect in the system that the Credit distributed would only happen for one GSTIN and ignored the other GSTIN. A data fix was done to correct the data for 72 ISD users. This issue has been fixed on 31st Jan 2022</p> <p>Financial Implication : No</p> <p>Taxpayers Impacted – 72</p>

8: Transfer of the Amount in Cash Ledger from Temp ID to Regular GSTIN



Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Request to transfer the amount in the Cash Ledger from Temporary ID to the regular GSTIN of taxpayer.	14-01-22	<p>Three taxpayers had deposited tax amount on Temporary Advance Ruling ID where as they had regular GSTINs (08JHBP5226B1ZL, 08JEIPS2409C1ZF and 08BKQPA2467N1ZN). On request from GCST Jodhpur Commissionerate, the amount in the Advance Ruling ID was transferred to their regular GSTINs in their respective cash ledger. This issue was fixed on 18th Jan 2022.</p> <p>Financial Implication : No</p> <p>Taxpayers Impacted – 03</p>

9 : Amount not Debited from Ledger after ITC03 Filing



Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Form GST ITC-03- Taxpayers who had opted in for Composition scheme to reverse the ITC. Due to defect in the GST System, after filing ITC-03 the amount was not debited from the Ledger.	10-12-21	<p>The normal taxpayers after opting to pay tax under composition scheme have to surrender ITC availed on stock through Form GST ITC-03 since composition taxpayers are not entitled to claim credit. Due to technical issue in the system application software, 131 taxpayers have reported liability but debit could not be made in credit/ cash ledger, though filing of the said form had happened and ARN was generated.</p> <p>To recover the amount due, the aforesaid form had to be reset to enable the 131 taxpayers to file again and pay the liability declared.</p> <p>The issue has been fixed on 25th January, 2022.</p> <p>Financial Implication : No</p> <p>Taxpayers Impacted – 131</p>

10 : Balance Correction in Electronic Cash Ledger



Issue Reported	Date Intimated to MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Cash balance correction due to credit and debit happened simultaneously	12-11-21	<p>In a rare event, the transaction of debit from GSTR3B and CIN (credit) record happened concurrently. Due to dirty read, the credit entry did not update the cash ledger Balance. Consequently, the debit entry read the preceding balance, without reading the credit entry in the cash Ledger.</p> <p>Ticket no. 6415257 was logged for this issue by the taxpayer with GSTIN: 27ATNPK9574H1ZY. The data fix in the cash ledger has been done on 16/11/2021.</p> <p>Financial Implication : Yes</p> <p>Taxpayers Impacted – 01</p>



THANK YOU!!

GSTN Goods And Services Tax Network



Agenda Item 14: Interim Report of the Group of Ministers (GoM) on Rate Rationalisation for consideration of the GST Council

The GST Council, during its 45th Meeting held on 17th September, 2021, decided that a Group of Ministers may be formed to look into matters related to rate rationalization and correction of inverted duty structure. Subsequently, the **Group of Ministers on Rate Rationalization (GoM)** was constituted with Sh. Basavaraj S. Bommai, Hon'ble Chief Minister, Karnataka as convenor, having the following Hon'ble Ministers from different States-

S. No.	Name	State	
1.	Sh. Basavaraj S. Bommai	Karnataka	Convenor
2.	Sh. Tarkishore Prasad	Bihar	Member
3.	Sh. Mauvin Godinho	Goa	Member
4.	Sh. K. N. Balagopal	Kerala	Member
5.	Sh. Shanti Kumar Dhariwal	Rajasthan	Member
6.	Sh. Suresh Kumar Khanna	Uttar Pradesh	Member
7.	Dr. Amit Mitra (later replaced by Smt. Chandrima Bhattacharya)	West Bengal	Member

2. The terms of reference (ToR) of the GoM were that it shall:
 - (i) review the supply of goods and services exempt under GST with an objective to expand the tax base and eliminate breaking of ITC chain;
 - (ii) review the instances of inverted duty structure other than where Council has already taken a decision to correct the inverted structure and recommend suitable rates to eliminate inverted duty structure as far as possible so as to minimize instances of refund due to inverted duty structure;
 - (iii) review the current tax slab rates and recommend changes in the same as may be needed to garner required resources; and
 - (iv) review the current rate slab structure of GST, including special rates, and recommend rationalization measures, including merger of tax rate slabs, required for a simpler rate structure in GST.
3. Subsequently, in the 46th GST Council Meeting held on 31st December, 2021, while deciding to defer its earlier decision to correct inverted duty structure on textiles, the Council also asked the GoM on rate rationalization to look into the issue of duty inversion in the textiles sector.
4. The GoM has held three meetings so far and has decided to submit its recommendations on corrections in inverted duty structure and review of exemptions on supply of goods and services in the GST rate structure, in its interim report annexed hereby as Annexure to this Note. The GoM felt that

the remaining two mandates involve other issues requiring extensive analysis, which will take another 3 months' time for the GoM to come up with final report.

5. The Interim Report of the Group of Ministers on rate rationalization referred to in paragraph 4 above (Annexure to this note) is placed for the consideration of the Council and extension of further 3 months is sought from the Council, for the GoM to come up with its final report.

Agenda for 47th GSTCM Volume 3

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I. Context

1. Under the GST legal framework, the States were to be paid compensation amount, for the loss of revenue arising on account of implementation of the goods and services tax in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, for a period of 5 years from the date of implementation of GST. This period is coming to an end in June, 2022.
2. The GST revenue of both the Centre and the States, including the GST Compensation Cess collection had suffered drop during the first and second waves of the COVID-19 pandemic in 2020 and 2021, although post covid recovery has been impressive.
3. Thus, there was a clear need to take steps to augment the GST revenue in order to provide resources for both the Centre and the States. In this background, the GST Council in its 45th Meeting took up the issue of Review of Revenue position under GST (Agenda item No. 17) and Compensation- Scenario post June, 2022 and options (Agenda item No. 18) for deliberation.

II. Decisions of the 45th and 46th GST Council Meetings

4. While discussing the above two issues in its 45th Meeting held on 17th September, 2021, the GST Council considered it appropriate to form a Group of Ministers (GoM) for looking at rate restructuring / rate rationalization, including correction of inverted duty structure (IDS), to reduce classification related disputes and to enhance GST revenues. It was envisaged that the GoM would consider items having rate distortion which was leading to inversion of duty, review the plethora of exemptions/concessional rates in GST, which not only have revenue implication but are in general causing distortion, and also look at general rate structure, including the rate slabs. The GoM would submit its report, which will be considered by the Council and recommendations may be made thereafter. The GoM on rate rationalization was accordingly constituted vide Department of Revenue O.M. dated 24th September, 2021 with specific terms of reference (Annexure – B).
5. In addition, the GST Council in its 45th Meeting had inter alia also recommended rationalizing the rates on various items in the textile chain in order to correct the

IDS in textiles sector, with effect from 1st January, 2022. Notification No. 14/2021-Central Tax (Rate) dated 18th November, 2021 and corresponding IGST/ UT rate notifications were accordingly issued to implement this recommendation.

6. However, a number of representations were received by the Centre as well as various States informing that the decision to raise tax on textiles from 5% to 12% for correcting IDS would cause hardships, lead to unemployment, etc, and requesting that the said decision may be put on hold or deferred.
7. The GST Council in its 46th Meeting held on 31st December, 2021 recommended that the decision to raise GST rates in textiles sector to correct IDS be deferred and this issue be also examined by the GoM on rate rationalization (Annexure-C). Thus, the GoM was handed this additional mandate as well.

III. Group of Ministers and its Terms of Reference

8. As directed by the GST Council in its 45th Meeting, a Group of Ministers (GoM) was constituted under the Chairmanship of Sh. Basavaraj S. Bommai, Hon'ble Chief Minister of Karnataka. The constitution of GoM is given at Annexure - B.
9. As per the Terms of Reference given to the GoM, it has to—
 - a) *review the supply of goods and services exempt under GST with an objective to expand the tax base and eliminate breaking of ITC chain;*
 - b) *review the instances of inverted duty structure other than where Council has already taken a decision to correct the inverted structure and recommend suitable rates to eliminate inverted duty structure as far as possible so as to minimize instances of refund due to inverted duty structure;*
 - c) *review the current tax slab rates and recommend changes in the same as may be needed to garner required resources; and*
 - d) *review the current rate slab structure of GST, including special rates, and recommend rationalization measures, including merger of tax rate slabs, required for a simpler rate structure in GST.*
10. Further, as already mentioned above, based on directions given subsequently by the 46th GST Council Meeting, the GoM was also to look into the issue of IDS in the textiles sector.
11. The Fitment Committee was directed to assist the GoM.

IV. Deliberations of the GoM

12. Inputs on the terms of reference of the GoM were requested from all the States and UTs. A number of States provided their views on the matter.
13. The Fitment Committee met on 7th October, 2021 and again on 18th -19th October, 2021 and discussed issues related to the terms of reference of the GoM. The inputs received from States were also discussed by the Fitment Committee.
14. Based on the deliberations of the Fitment Committee, inputs/suggestions/proposals were placed before the GoM for consideration and making recommendations to the GST Council.
15. The Group of Ministers has so far held three detailed meetings, on 12th November, 2021, 20th November, 2021 and 17th June, 2022, and discussed the proposals for GST rate rationalization in detail.
16. In the 3rd Meeting of the GoM, it was decided that suggestions of the GoM on the first two Terms of Reference (ToR), namely **review of exemptions** and **correction of inverted duty structure**, may be submitted to the GST Council in the form of (this) interim report. It was felt that further discussion is required before suggestions for the remaining mandate of the GoM, especially on rate slab restructuring, and the same may be included in the final report of the GoM to be issued at a subsequent date after further deliberations.
17. The broad themes discussed in the GoM so far, leading up to the decisions are summarized in the foregoing paragraphs. The specific suggestions of the GoM are placed at **Annexure-A** to this interim report.

V. Inverted Duty Structure

18. In order to examine instances of inverted duty structure (IDS) in GST rates on goods, available GST IDS data was examined and major CTH where sizeable GST refund on account of inverted duty had been claimed were singled out. The backward linkages for these cases were also identified. This preliminary exercise was done by the Fitment Committee.
19. Based on the analysis, it was noted that the major headings where GST refund due to IDS is being claimed [or likely to be claimed] or where otherwise acute inversion exists/existed included edible oils, coal, ores, pharmaceuticals, mobiles,

fertilizers, footwear, textiles, utensils, pens, leather, etc. It was noted that based on recommendations of the GST Council, inversion in many sectors has already been rectified, such as mobile phones, footwear, renewable energy equipment, etc.

20. In respect of two specific items, namely edible oils and coal, the GoM observed that there is substantial refund on account of inverted duty structure, even though the rates of inputs of these items (other than packaged items, and miscellaneous chemicals etc., which attract GST at 18%) do not suggest inversion. Inverted duty refunds may be anticipated and reasonably justified in items having principal inputs at higher rate than finished products, e.g., fertilizers and tractors etc. but not envisaged in items like edible oil and coal. As a remedy, the GoM suggests that ITC refund on account of inverted duty structure, on these items may be disallowed.
21. Broadly, there was general consensus in the GoM that in order to streamline the GST structure and ensure proper credit flow as envisaged in the scheme, it is important to correct all anomalies such as breakage of credit chain due to exemptions on manufactured/ processed items and ITC blockage due to inverted duty structure.
22. IDS results in accumulation of ITC. Refund of ITC accumulated on account of input services and capital goods is not available. Therefore, such accumulation increases the cost of supplier. Such embedded taxes increase the cost of entire supply chain. This makes Indian manufacturers and suppliers uncompetitive vis a vis import of goods and services. This also makes Indian goods uncompetitive in international export market. ITC accumulation also acts as an incentive for evading tax on input goods and services.
23. The impact of duty inversion was further examined in detail with an example. *To illustrate*, the case of Bicycle pumps [CTH 8414 20 10] was taken up, which currently attracts GST at the rate of 5%. Most inputs for this item such as steel, aluminium, rubber, etc are at 18%. Thus, the domestic manufacturer, who bears burden of taxes on inputs at 18%, is unable to utilize the credit of these taxes when his output product is charged at lower rate, i.e. 5%. This unutilized credit therefore sticks as additional cost of final item and is passed on to the consumer.

In other words, the consumer bears burden of 5% tax on final product, *as well as the burden of taxes on inputs paid at higher rates*. This also makes the product uncompetitive vis-a-vis cheaper imports (which do not face such inversion) and therefore, the domestic manufacturer eventually loses market to the overseas supplier. This analogy is applicable to all manufactured items like machinery, such as for agriculture, and agricultural processing, milling, grinding, medical equipment, assistive devices, utensils, table, and kitchen articles etc where inverted duty structure exists and causing distortion, not only in GST rates but also for domestic manufacturing.

24. If the inversion in the above example is rectified, by levying 18% GST rate on final product, then the domestic manufacturer will be able to utilize the credit of taxes paid on inputs and thus, no burden in this regard will be passed on to the consumer. Thus, by rectifying inversion, the cost ultimately born by the consumer is not expected to increase substantially with the change in rates (as the burden of input taxes goes away), while the domestic manufacturer and ultimately the economy will benefit.
25. At the same time, there was concern that across the board increase in the GST rates on account of such corrections may impact the consumer price in certain cases or may be perceived as impacting the common man adversely. This concern was further amplified given the current scenario of persisting inflation. Under these circumstances, the GoM has adopted a cautious approach while making its suggestions (*e.g., GoM is of the view that even though items like utensils, tableware, tractors, pharma, aggarbatti, certain agricultural machinery etc may have acute inversion, any rate calibration in these items for correcting this inversion may not be desirable at this stage for the above stated consideration*)
26. Insofar as services are concerned, the GoM examined the inverted duty structure in following instances:-
 - a) Services provided by a foreman of a chit fund in relation to chit.
 - b) Composite works contract service attracting concessional rate of 5%/12%, such as supplied to government, local authorities and for construction of roads bridges etc.

- c) Services by way of job work in relation to (i) processing of hides, skins and leather; (ii) manufacture of leather goods or footwear (iii) manufacture of clay bricks (iv) textile & textile products and tailoring services
27. All financial services are at 18% rate. Services supplied by **foreman to chit fund** is an exception and there is no rationale for the same. Input services used by chit fund companies such as the rent of premises, security, telecommunication attract GST rate of 18%. It was unanimously agreed that GST rate on services supplied by foreman to chit fund may be increased from 12% to 18%.
28. The GoM has recommended that **GST rate on finished leather and composition leather** may be increased from 5% to 12 %. The articles on footwear have also been increased to 12% with effect from 1st January 2022. Leather goods are already at 18%. Therefore, considering that processing of these goods involves inputs (chemicals), input services and capital goods all attracting 18% GST, a GST rate of 12% would be desirable to correct inversion. On the same rationale, the GST rate on job-work in relation to manufacture of leather goods and footwear merits calibration. Similarly, with revision in GST on clay bricks has been revised from 5% (without ITC) to 12% (with ITC)/ 5% (without ITC) it would be appropriate that job work is also calibrated accordingly. This would remove the distortions in rate. It may be mentioned that small job workers/manufacturers would be availing threshold or composition, the limits for which have been revised significantly post roll out of GST.
29. As regards **job work services in relation to textile and textile products**, it was observed that the said proposal was made by Fitment Committee in wake of the proposed increase in GST rate of textile fabric and textile products from 5% to 12% with effect from 1st January, 2022. The GoM felt that since the latter proposal is still under consideration, GST on job work services in relation to textile and textile products may continue at 5% for the time being.
30. **Composite works contract services** require special elaboration as it required careful consideration and there were divergent views on any rate calibration in GST rate in the composite works contract services. One view has been that any increase in GST rate of works contract would impact the states adversely as

immediate fund requirements would increase. Counter argument, however, is that this calibration is necessary to correct inversion in rates, remove distortion in GST rate structure, remove inefficiencies in GST and plug leakages in revenue. It is also felt that as GST collected eventually goes back to Governments (Centre and States), that too immediately in the next month, the apprehension of immediate increased fund requirement may not be true. Considering the sensitivity involved, the overall implication in works contract services are discussed below.

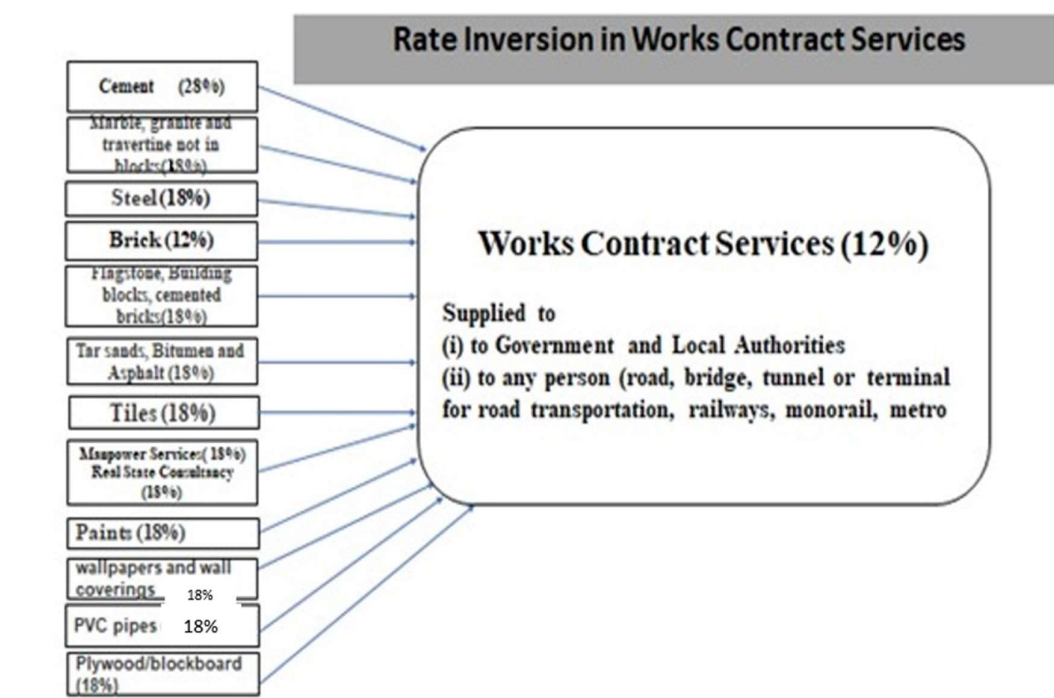
- (i) IDS on works contract services supplied to Central and State governments and local authorities and on construction of roads bridges, tunnels, terminals, canals, dams, metro etc. was deliberated upon extensively. Works contract services, other than for construction of houses, generally attracts GST at standard rate of 18%. However, works contract services supplied to Government and local authorities attract at the lower rate of 12%. Works contract services for construction of roads, bridges, tunnels, terminals, railways, metro and mono rail also attract GST @12%, whether supplied to Government or any other person.
- (ii) Most of the inputs and input services used for works contract on the other hand attract GST at higher rates of 18% and 28%. For instance, inputs such as cement attract GST at the rate of 28% and marble, granite, steel, building blocks, cement bricks, tar, bitumen and asphalt, ceramic tiles, paints, manpower supply attract GST at the rate of 18% as shown in the annexed flow chart. As a result, 12% rate on works contract services supplied to Governments or for construction of roads, bridges, dams, metro etc. results in inversion of tax rates. The result is accumulation of ITC which increases cost of projects. This also acts as a disincentive for procurement of tax- paid input goods and services resulting in revenue leakages and malpractices such as ITC diversion. The construction sector is a large sector of economy of about Rs. 37 lakh crores as per national accounts statistics, 2019-20. Therefore, revenue leakage in this sector is a matter of grave concern.

- (iii) This is the reason why GST Council had initially recommended standard rates of 18% on all works contract services. The rate on specified works contract services was reduced to 12% later.
- (iv) In pre-GST regime, the States did not give any significant exemption from VAT on works contract supplied to Government or for construction of roads, bridges, dams, irrigation etc. In service tax regime also a standard service tax rate applied on taxable services, including works contract.
- (v) While there is no distinction or duality in GST rates on goods supplied to governments and other recipients, in case of services, this duality exists.
- (vi) The inversion in works contract services supplied to Government and local authorities, while having clear disadvantages, may not result in any actual benefit to the Central or State Governments. The tax which the Government saves at the lower rate of 12% would have in any case accrued to the Governments in the same month. The calibration would while correct the inversion in GST rate would also ensure that exchequer is not impacted adversely in any manner. The States may not have any adverse impact, whatsoever, in view of GST sharing between Centre and States and subsequent devolution of GST revenue.
- (vii) During the discussion on works contract services, many States expressed the concern that higher rate of GST on works contract services will put fiscal pressure on them. It was explained that such correction may actually lead to net positive revenue accruing to the States and in fact, ease the fiscal pressure. The correction of IDS would also lead to better tax collection on the procurement of building material and input services which would also help in plugging leakages on input side supply chain. While the service provider would recover entire cost from government or other service recipient, the leakages of revenue in supply chain meant that in the present rate regime, the Government actually lose

revenue and it gives rise to the nuisance of fake dealers, fake invoices etc on account of possibility of accumulated ITC with works contract service provider.

(viii) The only concern that may have some significance is that the State Governments will have to pay this increased tax to contractors upfront and the increased tax collection will flow back to them later. However, as stated above, the increased tax collection will accrue in the same month in which the Government makes the additional expenditure on account of increase in GST rate on works contract services.

(ix) The distortion on account of inverted rate structure in composite works contract services is depicted in the diagram below:



(x) As may be seen all major inputs, input services and capital goods attract GST at the rate of 28% or 18%. These constitute major cost. To illustrate the magnitude of inversion, let us assume of value of output service as Rs 100. The GST liability would be Rs 12%. Now, assuming that cement is 1/3rd of the cost and other items are 1/2 of the cost, the service provider shall have an input tax of Rs 18.24, while

output tax liability would only be Rs 12 on final services. Thus, this ITC overflow would create distortion including such as clandestine purchases, or unauthorised transfer of accumulated ITC etc, leading to serious revenue leakages.

- (xi) There was general agreement in the GoM that the such IDS needs correction. However, the question was whether it is the opportune time for such correction. Certain concern was expressed that the current inflationary pressure on the States may become worse due to increase in GST rate on works contract services supplied to the State governments. The situation created by COVID and the need to make a swift economic recovery in the post pandemic period was also mentioned. Since it was generally agreed that correction of IDS is a step in the right direction, however, keeping in view the concerns raised, it was felt that these aspects are highlighted for **the GST Council may take a final view on this item.**

- 31 Based on the above discussions, the GoM considered it fit to recommend rationalizing GST rates on a number of goods and services, to correct duty inversion, as listed in **Annexure-A**. It may be mentioned, as has also been stated above, that a balanced and cautious approach was taken and a number of consumer sensitive items, such as pharmaceuticals, fertilizers, certain agricultural equipment, hand-pumps, medical devices, etc were left out of the exercise despite suffering inversion.

VI. Review of exemptions

- 32 A similar approach, as above for TOR relating to IDS, was taken in respect of exemption on goods and services, as they have the same effect in disruption of credit chain and blocking of ITC. All the exemptions under the current GST rate structure were examined. While a number of these have been retained on account of consumer sensitivity such as bread, tea, coffee, cotton seed oil cake, poultry and aquatic feed, certain exemptions in goods and services have been suggested to be rationalized. The new proposed rates for such goods where withdrawal of exemption is recommended the revised would be the rate that applies to respective HS code but for the exemption.

- 33 Another major category of exemptions reviewed was the one on unbranded food cereals, flour, honey, etc and other similar items, wherein the condition for exclusion from exemption was that *the corresponding items must be put up in unit container and –*
- (i) *bearing a brand name; or*
 - (ii) *bearing a brand name on which actionable claim or enforceable right in a court of law is available (other than where any actionable claim or enforceable right in respect of such brand name has been voluntarily foregone.*
- (i.e. such items when put up in unit container and satisfying condition (a) or (b) above are being taxed at applicable rates)
- 34 These kinds of exemptions, due to the subjective nature of the term ‘branded’ were causing disputes and revenue leakage, and had been amended multiple times as the complex entry indicates. It was also brought to the notice of GoM by certain member states that revenues from these items have fallen significantly as compared to pre-GST regime in view of scope of coverage having been narrowed in GST.
- 35 The GoM was of the view that the exclusion condition for such exemptions may be simplified by replacing the term ‘*branded*’ with the deterministic condition of being ‘*pre-packaged and labelled*’[*for retail sale in accordance with the Legal Metrology Act and Rules thereunder*]. To draft the simplified entry for such exemptions, the GoM suggests that provisions may be drawn from the Legal Metrology Act, 2009 and rules made thereunder. It may be pointed out that for such cases, no rate change is being suggested and such items sold loose or unlabelled shall continue to remain exempt. It was also felt that pre-packed and labelled other items curd, lassi, puffed rice [these are usually produced by large manufacturers] should attract nominal GST. Such GST on pre-packed and labelled specified item would in fact provide a level playing field to MSME units/units below threshold [or within composition limit] whose product would continue to get GST exemptions.
- 36 The GoM also felt that exemption/concessional rates on manufactured items needs to be pruned as these not only cause inversion in GST rates and impact domestic capacity creation adversely but also do not provide significant gains to

recipient on account of cost built up considering ITC accumulation. *Illustratively*, goods supplied in relation to exploration of mineral oil, which presently attract GST at the rate of 5%. This not only causes acute inversion but also gives rise to refunds and discourages domestic manufacturing of these items. On similar rationale, the Council had revised the GST rates of new and renewable energy items like solar panel, solar cell, wind turbines, hydro plants, waste2energy equipment, [rate was revised w.e.f. 1.10.2021] from 5% to 12%. Also, inputs services which constitute major cost for such exploration attract GST at the rate of 12%. Therefore, calibration of rate on specified goods for petroleum from 5% to 12% on input goods will go a long way in correcting inversion and creation of domestic capacities. Similarly, there are other exemptions/concessions on scientific and technical instruments, which causes similar distortion and require corrections.

- 37 Insofar as services are concerned, most of the GST exemptions on Services have been carried forward from Service Tax period. In Service Tax period, ITC of VAT paid on capital goods, raw material and other inputs was not available for payment of Service Tax. Similarly, ITC of Service Tax paid on input services was not available to traders for payment of VAT on sale of goods. In contrast, under the GST regime, there is free flow of ITC. The compartmentalization of ITC in non-fungible buckets has been done away with. Therefore, all Service Tax exemptions on B to B supplies have lost justification. It was also felt that the exemptions in case of B to B supplies unnecessarily break ITC chain and increase the cost of supplies. The exemptions also result in increased compliance burden on the suppliers as they are required to make appropriate reversals of ITC on account of such exemptions. A number of such exemptions on B2 B supplies were reviewed by GoM. The GoM unanimously agreed that the GST exemptions on a number of B2 B supplies may be withdrawn.
- 38 One of the B2B exemptions recommended for withdrawal by the Fitment Committee was the exemption on reinsurance of certain exempted insurance services. It was felt by the GOM that most of the insurance schemes for which the reinsurance is exempted are meant for the poor or the farmers. Premium for most of them is paid by the Centre or State Governments. Withdrawal of

exemption on reinsurance of these schemes may increase cost of such insurance policies for the weaker sections and the farmers. Therefore, the GoM felt that this exemption may be continued.

39 The GoM also felt that GST should refrain from entity-based exemptions to the extent feasible. For example, there are a number of exemptions for regulatory authority, entities like RBI etc. GST has a vast coverage and has a large base including small taxpayers. Like all others, these entities should also be willing to be in GST regime and pay GST on their supplies, that are otherwise taxable, and also may not seek GST exemption on their input services. Accordingly, GoM has recommended withdrawal of exemption that has been hitherto provided to entities like RBI, GSTN, SEBI, FESSAI etc

40 Other major recommendations for withdrawal of exemption on services include,

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- (i) Hotel accommodation having room rent upto Rs 1000 a night. It was felt that with threshold of Rs 20 lakh, composition limit of Rs 50 lakh, such an exemption may not be required. Such exemption causes revenue leakage.
- (ii) Hospital rooms with room rent of above Rs 5000 a day is meant only for persons who could afford and such room are generally AC, provided by large hospitals. Therefore, a nominal GST of 5% could be applied on such room rent. Such nominal tax on higher room rents would not impact the health services and would have no impact whatsoever on common man. Similarly, cord blood bank for stem cells is a service meant for a class who could afford paying taxes.
- (iii) Services by way of training or coaching in recreational activities when provided by commercial large entities should be subject to tax as even other common supplies attract GST. Such services provided by individuals, irrespective of turnover, or entities below threshold would continue to exempt.
- (iv) Renting of dwelling to businesses also merit imposition of GST. The existing exemption of residential dwelling to non-business may continue to be exempt.

- (v) On merit, exemption to services like common bio medical facility cause harm to such service providers as they are stuck up with their ITCs, which eventually has to be loaded on to their cost and thus not providing any relief to service receiver on account of such exemption.
 - (vi) Storage and warehousing of taxable items say like natural fibre, sugar etc does not provide any relief to consumer and in fact, leads to cost increase on account of requirement of reversal of input tax credits. Therefore, in such cases exemption from GST on storage and warehousing of taxable goods is not desirable. Similarly, exemption to certain other services having significant inputs [with 18% GST rate] like fumigation of warehouses may not be of relief to consumer while causing undesirable distortion in GST rates and ITC chain.
 - (vii) Exemption to business class air travel for northeastern states may not be warranted while exemption in economy class may continue.
 - (viii) There are a few exemptions on road and rail transport, when such services are input for business and thus ITC thereof being available, are not desirable. Withdrawal of such exemption would not impact the private consumption of goods transport as existing exemption therein would continue.
- 41 Accordingly, the GoM suggests that exemptions in GST rate on certain goods and services may be rationalized as given in **Annexure-A**.

VII. Recommendations of the GoM

- 42 Based on the discussions as outlined above, the GoM in this interim report has made certain suggestions on **correction of inverted duty structure** and **review of exemptions** in the GST rate structure on goods and services which are listed at Annexure-A to this interim report, for consideration of the GST Council. The GoM is of the opinion that further deliberations on the remaining terms of reference are required and suggestions pertaining to the same shall be included in the final report of the GoM.

Annexure -A: Recommendations of the Group of Ministers

The Group of Ministers, after examining the issues related to its Terms of Reference, places the following recommendations before the GST Council for consideration.

1. Inverted Duty Structure correction in Goods

S. No.	Item (CTH)	Present rate	Schedule - Entry No.	Recommendation of GoM [recommendation/ proposed rate]
1.	Edible oils of all kinds attracting GST @ 5% (Chapter 15)	5%	I-78A, 79 - 90	As inversion is not envisaged (except on account of packing material), ITC refund on account of inverted rates be disallowed.
2.	Coal and other items in Chapter 27 attracting GST @ 5% (5%	I-158, 159, 160	
3.	Printing, writing or drawing ink (3215)	12%	II-70	18%
4.	<ul style="list-style-type: none"> ▪ Knives with cutting blades serrated or not (including pruning knives), other than knives of heading 8208, and blades therefor (8211) ▪ Paper knives, Pencil sharpeners and blades therefor (8214) ▪ Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware (8215) 	12%	II-187, 188, 189	18%.
5.	<ul style="list-style-type: none"> ▪ Power driven pumps primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps (8413); ▪ Bicycle pumps (8414 20 10); 	12%	II-192,193, 195	18%.

	<ul style="list-style-type: none"> Parts of air or vacuum pumps and compressors of bicycle pumps (8414 90 12) 			
6.	<ul style="list-style-type: none"> <i>Paawan Chakki</i> that is Air Based Atta Chakki (84) Machines for cleaning, sorting or grading, seed, grain or dried leguminous vegetables; Machinery used in milling industry or for the working of cereals or dried leguminous vegetables other than farm type machinery and parts thereof (8437) Wet grinder consisting of stone as grinder (8509) Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437, Parts [9433 90 00] Milking machines and dairy machinery (8434) 	5%	I-230, 233, 234C	18%
		12%	II-197 (part), 198	18%
7.	<ul style="list-style-type: none"> LED Lamps (8539); LED lights and fixtures including LED lamps (9405) LED (light emitting diode) driver and MCPCB (Metal Core Printed Circuit Board) (9405) 	12%	II-205, 226, 227	18%
8.	Drawing and marking out instruments; Mathematical calculating instruments; pantographs; Other drawing or marking out instruments (9017 20)	12%	II-217	18%
9.	Solar Water Heater and system (8419 12)	5%	I-232	12%.
10.	Prepared/finished Leather/chamois leather / composition leathers	5%	I-197A to 197E	12%

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2. Inverted Duty Structure correction in Services

Sr. No	Description of Services	GST rate (%)	Major Inputs and Input Services causing inversion		Recommendation of the GoM
			Description	Rate (%)	
I	Works Contract Services				
1.	Composite works contract supplied to government, local authorities: - (Involving predominantly earth work), [Sr. No. 3(vii) and (x) of 11/2017-CTR dt. 28.06.2017]	5%	Inputs/input services	Rate	GST Council may take a view, in view of discussion at para 30 above. In case of revision, 12% rate is proposed on this service on or after a specified date.
			Manpower supply, security, financial and other services	18%	
			Bricks	12%	
			Other inputs	18%	
2.	Composite works contract supplied to government, local authorities w.r.t – (a)historical monument, canal, dams & other irrigation works, water supply/treatment/ sewerage etc (b) civil structure or	12	Inputs/input services	Rate	GST Council may take a view, in view of discussion at para 30 above. In case of revision, 18% rate is proposed on this service on or after a specified date.
			Cement	28	
			Steel	18	
			Electrical fittings	18	
			Sand	5	
			Bricks	12	

Sr. No	Description of Services	GST rate (%)	Major Inputs and Input Services causing inversion		Recommendation of the GoM
			Description	Rate (%)	
	original works predominantly for use other than for commerce, industry, or any other business or profession (c) structure predominantly for use as educational, clinical, art or cultural establishments etc (d) residential complex for self-use or for employees. Including such services provided by a subcontractor to main contractor. [Sr. No. 3(iii), 3(vi) and 3(ix) of 11/2017-CTR dt. 28.06.2017]		Paint	18	
			Sanitary fittings	18	
			Wood	18%	
			Services: Finance, insurance, security, manpower supply, consultancy etc	18%	
3.	Composite works contract w.r.t (a) road, bridge, tunnel etc (b) civil structure or original works w.r.t certain government schemes (c) effluent treatment plant (d) funeral, burial ground	12	Same as above		18%

Sr. No	Description of Services	GST rate (%)	Major Inputs and Input Services causing inversion		Recommendation of the GoM
			Description	Rate (%)	
	(e) railways etc (f) civil structures/ original works pertaining to different components of PMAY etc [Sr. No. 3(iv),(v), & (va) of 11/2017-CTR dt. 28.06.2017]				
II	Financial and related Services				
4.	Services provided by a foreman of a chit fund in relation to chit [Sr. No. 15(i) of 11/2017-CTR dt. 28.06.2017]	12	Inputs/input services	Rate	18%
			Office Rent	18	
			Security	18	
			Telecom	18	
			Misc inputs	18	
III	Services by way of job work				
5.	Services by way of job work in relation to: [Sr. No. 26(i), (ii) and (iii) of 11/2017-CTR dtd. 28.06.2017]				
a)	26(i)(e) - Processing of hides, skins and leather	5	Inputs/input services	Rate	12% .
			Capital goods	18	
b)	26 (i) (ea)- Manufacture of leather goods or footwear [Chapter 42 or 64]	5	Dyes	18	
			Chemicals	18	

Sr. No	Description of Services	GST rate (%)	Major Inputs and Input Services causing inversion		Recommendation of the GoM
			Description	Rate (%)	
c)	26(i)(h)- Manufacture of clay bricks	5	-	=	12% . [GST on clay bricks has been increased from 5% to 12% w.e.f. 1-4-2022.]

3. Review of exemptions in Goods

The GoM examined existing exemptions (Nil as well as concessional rate) in GST on goods and makes the following recommendations.

3.1 Review of exemption condition: from 'branded' to 'pre-packaged and labelled'

In notification No. 2/2017-Central Tax (Rate), a number of items, such as cereals, flours, natural honey, etc are exempt, *other than those put up in unit container and –*

- a) *bearing a brand name; or*
- b) *bearing a brand name on which actionable claim or enforceable right in a court of law is available (other than where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to the conditions as in ANNEXURE I).*

In order to simplify the exclusion condition, the GoM recommends that the condition for exclusion may be modified as follows-

".. other than those put up in unit container and are pre-packaged and labelled."

It may be mentioned that the goods that are un-packed, un-labelled, etc, will continue to remain exempt.

To draft the simplified entry for such exemptions, the GoM suggests that provisions may be drawn from the Legal Metrology Act, 2009 and rules made thereunder.

List of exemptions where exclusion condition may be modified so that they are taxed when pre-packaged and labelled in unit container, for goods mentioned in the following serial number of the notifications No. 2/2017-CT(R)

S. No.	S No. of Notif 02/17	HS Code	Description of goods
1.	9	0202 to 0210	Meat, other than fresh or chilled
2.	10	0203 to 0309	Fish, crustaceans or molluscs, other than fresh or chilled
3.	26.	0403	Curd; Lassi; Butter milk
4.	27.	0406	Chena or paneer
5.	29.	0409	Natural honey
6.	30B.	0504	Guts, bladders, stomachs of animals (other than fish), other than fresh or chilled
7.	45.	0713	Dried leguminous vegetables, shelled
8.	46A.	0714	Manioc, salep, Jerusalem artichokes, sweet potatoes etc

S. No.	S No. of Notif 02/17	HS Code	Description of goods
9.	46B.	08	Dried <i>makhana</i>
10.	65. to 72.	1001 to 1008	Wheat and meslin; Rye; Barley; Oats; Maize; Rice; Grain sorghum; Buckwheat, millet, jowar, bajra, ragi etc
11.	73. to 78	1101 to 1106	Wheat or meslin flour; maize (corn) flour, Cereal grains, hulled; flour, powder, flakes, etc (of potato etc)
12.	94.	1701 or 1702	Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery; Khandsari Sugar
13.	95.	1904	Puffed rice (Muri), flattened rice (Chira), parched rice (Khoi), parched paddy or rice coated with sugar or gur, (Murki)
14.	108.	3101	All goods and organic manure
15.	132A.	53	Coir pith compost

3.2 Withdrawal of exemption in Goods

3.2.1 The exemptions given under the following serial numbers of notification No. 2/2017-Central Tax (Rate) may be withdrawn as follows-

S. No.	S.No. of Notif 02/17	HS Code	Description of goods	Recommendation of GoM
1.	118	4907	Cheques, loose or in book form	18%
2.	122	4905	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed	12%
3.	141	8807	Parts of goods of heading 8801 <i>[heading 8801 covers balloons, gliders, dirigibles, etc]</i>	18% <i>[heading 8801 attract 18%]</i>

3.2.2 Exemption (reduced rate of 5%) to goods related to petroleum/ Coal bed methane vide notification No. 3/2017-Central Tax (Rate) dated 28.06.2017

Keeping in view the fact that 5% rate leads to acute inversion in rates, and also that all the services for petroleum operations attract GST at the rate of 12%, it is desirable that GST rate for this entry is also revised to 12%. GST rate for renewables equipment has been increased to 12%.

3.2.3 Exemption (reduced rate of 5%) to scientific and technical instruments supplied to public funded research institutes – notification No. 45/2017-CT (Rate) and corresponding Customs notification No. 51/96-Customs for integrated tax on imports

This concessional rate leads to inverted rate structure and the GoM recommends that the concessional GST rate (including IGST on imports) may be withdrawn so that standard rates as applicable may apply. This will remove distortion.

3.2.4 Concessional GST rate of 5% on E-waste currently prescribed vide S. No. 234A of Schedule-I to notification No. 1/2017-Central Tax (Rate) may be withdrawn. E-waste will attract GST at the standard rate of 18%.

4. Review of exemptions in Services

4.1 Exemptions on services which mostly are B2B supplies [Present GST rate- Nil]

Sr. No	Description of goods and services	Justification for withdrawing exemption
1.	Transport of passengers by air in other than economy class, embarking from or terminating in an airport located in the North Eastern states and Bagdogra located in West Bengal; [Sr. No. 15 of 12/2017 –CTR dt. 28.06.2017]	Business class travel- Mostly B2B [otherwise also may not deserve exemption]
2.	Services by way of transportation by rail or a vessel or by road of , - ▪ railway equipment or materials; [Sr. No. 20(c), 20(d), 21(f) of 12/2017-CTR]	The services are being supplied to business entities who are eligible to claim ITC of tax paid on inputs
3.	Services provided by a goods transport agency, if consideration charged for the transportation ▪ of goods in a single carriage does not exceed one thousand five hundred rupees; ▪ of all such goods for a single consignee does not exceed rupees seven hundred and fifty; [Sr. No. 21(b) and 21(c) of 12/2017-CTR dt. 28.06.2017]	This exemption has been carried forward from service tax. In GST, services provided by GTA to an unregistered person are exempt. Hence, no rationale for this exemption in GST.
4.	Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of biomedical waste or the processes incidental thereto [Sr. No. 75 of 12/2017-CTR dt. 28.06.2017]	May be taxed at 12%, the rate at which common effluent treatment plants supplying similar services are taxed
5.	Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea. [Sr. No. 24B of 12/2017-CTR dt. 28.06.2017]	This exemption may be withdrawn when the services is in relation to goods which attract GST [indicated in blue in bold]. Exemption may continue on storage and warehousing of cereal, pulses, fruits, vegetable
6.	Services by way of fumigation in a warehouse of agricultural produce. [Sr. No. 53A and 54 (h) of 12/2017-CTR dt.	Such exemption creates ITC issues for fumigation agency.

Sr. No	Description of goods and services	Justification for withdrawing exemption
	28.06.2017]	
7	Services by way of slaughtering of animals [Sr. No 56 of 12/2017-CTR dt. 28.06.2017]	Provided to business entity. So exemption not warranted

4.2 Exemptions to Regulators

[Present GST-rate Nil]

Several exemptions have been given in GST on services supplied by regulators such as RBI, IRADA, SEBI etc. The services supplied by regulators are consumed by business entities which are entitled to take ITC of the same. The regulators also procure inputs and input services for supplying those services and can take ITC of GST paid on the same. Withdrawal of exemptions will not have any financial impact on the recipients. At the same time, it may reduce the cost of the regulators. This will also clean the tax structure by removing unnecessary exemptions and resultant disruptions in the ITC chain. The exemptions given to services supplied by regulators have also resulted in request for similar exemptions from a large number of other regulators. Therefore, GoM recommends that the following exemptions given to the regulators may be withdrawn.

Sr. No	Description of goods and services	Justification for withdrawing exemption
1.	Services by the Reserve Bank of India. [Sr. No. 26 of 12/2017-CTR dt. 28.06.2017]	▪ B2B [ITC available to recipient].
2	Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves. [Sr. No. 42 of 09/2017-ITR dt. 28.06.2017]	<ul style="list-style-type: none"> • B2B service • ITC would be available to RBI if 1 above is taxed
3	Services provided by the IRDA of India to insurers [Sr. No. 32 of 12/2017-CTR dt. 28.06.2017]	B2B [ITC available to recipient].
4	Services provided by the SEBI [Sr. No. 33 of 12/2017-CTR dt. 28.06.2017]	B2B [ITC available to recipient].
5	Services by way of licensing, registration supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators [Sr. No. 47A of 12/2017-CTR dt. 28.06.2017]	B2B [ITC available to recipient].
6	Services provided by the Goods and Services Tax Network to Government for implementation of Goods and Services Tax. [Sr. No. 51 of 12/2017-CTR dt. 28.06.2017]	Compliance simplification for GSTN

4.3 Exemptions prone to misuse [threshold exemption sufficient to address concern]

The GoM reviewed the exemptions with a view to weed out the exemptions which are prone to misuse. GOM recommends that the following exemption which is prone to misuse may be withdrawn.

Sr. No	Description of goods and services	Existing GST Rate	Major inputs and input services causing inversion		Recommendation of GoM
			Description of inputs	GST Rate	
1.	Hotel accommodation <1000 rupees per unit per day [Sr. No. 14 of 12/2017-CTR dt. 28.06.2017]	0%	Rent	18%	Recommendation: May be withdrawn and taxed at 12% <ul style="list-style-type: none"> Differential tax rates based on value of supply are prone to misuse and evasion.
			Furniture	18%	
			Kitchen equipment	18%	
			Crockery etc	18%	
			AC, refrigerators, LCD TVs	28%	
			Outsourced services like cleaning, housekeeping etc.	18%	

4.4 Exemptions not warranted as recipient could afford to pay [Present GST rate- Nil]

4.4.1 There are many exemptions which are unnecessary because the recipient of those services can easily afford to pay GST on them. Continuing such exemptions is against the objective of comprehensive taxation of all supplies of goods and services at reasonable rates. Such exemptions are also an unnecessary impediment to formalization of economy. They also result in revenue loss.

4.4.2 There was general agreement that GST of 5% could be applied on room rent (excluding ICU) charged from hospitalized patients where the hospital room charges are above Rs 5000 per day. The patients who can afford such costly hospital rooms can also afford to pay GST on them. It was observed that even hospitals which have got land from the Government or the land development authorities at concessional rates do not show sympathetic attitude towards treatment of the poor.

4.4.3 GoM recommends that the following exemptions may be withdrawn.

Sr. No	Description of goods and services	Justification for withdrawing exemption/rationalisation
1	Renting of residential dwelling for residential use [when supplied to business] [Sr. No. 12 of 12/2017-CTR]	Not much justification for exemption where the service of renting of residential dwelling is supplied to business [registered person] - Be taxed under RCM
2.	Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation. [Sr. No. 73 of 12/2017-CTR]	<ul style="list-style-type: none"> ▪ Caters to affluent class
3	Services by way of- (a) health care services by a clinical establishment, an authorized medical practitioner or para-medics [Sr. No. 74 (a) of 12/2017-CTR]	<p>Exemption may be rationalised.</p> <p>Healthcare services supplied to hospitalized patients, where charges for room (excluding ICU) exceed Rs 5000 per day per patient may be taxed to the extent of amount charged for the room at 5% without ITC.</p>

4.5 Rationalization of tax structure on services supplied by Department of Post

The services supplied by Department of Post by way of Speed Post, Express Post Parcel, Life Insurance and agency services are taxable whether supplied to business entities or individuals. The Department of Post pays GST on these services under forward charge. On the other hand, services such as Post Card, Inland Letters, Registered Post, Post parcel other than Express Post Parcel, logistic services supplied by Department of Post to individuals are exempt and to business entities taxable. Tax on these services of Department of Post is paid by the business entities under reverse charge. Therefore, some of the services of Department of Post are under forward charge and the others under reverse charge. This makes the tax structure applicable on the services of Department of Post unnecessarily complicated and increases compliance burden on Department of Post and also the business recipients. This also results in disputes and revenue loss. Therefore, the GoM recommends as follows:

Sr. No	Description of services	Recommendation of GoM
1.	<p>Services by the Central Government, State Government, Union territory or local authority excluding the following services—</p> <p>(a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>.....</p> <p>(d) any service, other than services covered under entries(a) to (c) above, provided to business entities.</p> <p>[Sr. No. 6 of 12/17 CT]</p>	<p>For department of post only the services of Post Cards and inland letters, book post, and envelopes weighing less than 10 gm. may be exempted</p> <p>All other services of department of post be taxed under forward charged to plug any leakage and for simplification.</p>

4.6 Miscellaneous Exemptions [Present GST rate- Nil]

GOM felt that there is no rationale for exempting services by way of training or coaching in recreational activities relating to- (a) arts or culture, or (b) sports when provided by any person other than an individual. Accordingly, GoM recommends that the following exemption may be rationalized.

Sr.No	Description of services	Recommendation of GoM
1.	Services by way of training or coaching in recreational activities relating to- (a) arts or	Exemption on services by way of training or coaching in

	culture, or (b) sports by charitable entities [12AA of the Income-tax Act]. [Sr. No. 80 of 12/17-CTR]	recreational activities relating to arts or culture supplied by any person other than an individual may be withdrawn.
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Constitution of Group of Ministers on Rate Rationalization**Annexure-B****S-31011/12/2021-DIR(NC)****Government of India****Ministry of Finance****Department of Revenue**

New Delhi, dated 24th September, 2021**OFFICE MEMORANDUM****Subject: Constitution of Group of Ministers (GoM) on Rate Rationalization.**

In its 45th meeting held on 17.09.2021 in Lucknow, the GST Council discussed the need to undertake GST rate rationalization including correction of inverted duty structure with an objective to simplify the rate structure, to reduce classification related disputes and enhance GST revenues. In the said meeting, the Council has already approved changes in GST rates to correct inverted duty structure in many sectors, including that in textile and footwear to be implemented with effect from 01.01 2022.

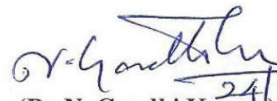
2. In the aforesaid meeting, the Council has decided to constitute a GoM to look into matters related to rate rationalization and correction of inverted duty structure. Accordingly, a **Group of Ministers on Rate Rationalization** is being constituted with following composition:

	Name	Designation and State	
1.	Sh. Basavaraj S. Bommai	Chief Minister, Karnataka	Convenor
2.	Sh. Tarkishore Prasad	Deputy Chief Minister, Bihar	Member
3.	Sh. Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol, and Legislative Affairs, Goa	Member
4.	Sh. K N Balagopal	Minister for Finance, Kerala	Member
5.	Sh. Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law and Legal Affairs, Rajasthan	Member
6.	Sh. Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs and Medical Education, Uttar Pradesh	Member
7.	Dr. Amit Mitra	Minister for Finance, West Bengal	Member

3. The GoM on Rate Rationalization shall—

- (a) review the supply of goods and services exempt under GST with an objective to expand the tax base and eliminate breaking of ITC chain;

- (b) review the instances of inverted duty structure other than where Council has already taken a decision to correct the inverted structure and recommend suitable rates to eliminate inverted duty structure as far as possible so as to minimize instances of refund due to inverted duty structure;
 - (c) review the current tax slab rates and recommend changes in the same as may be needed to garner required resources; and
 - (d) review the current rate slab structure of GST, including special rates, and recommend rationalization measures, including merger of tax rate slabs, required for a simpler rate structure in GST.
4. The GoM may suggest changes that may be implemented immediately and the roadmap for implementation for the changes that should be implemented in short and medium term. The Group may submit interim report for such immediate measures as it may deem fit. The Group shall submit its report in two months.
5. The GoM shall be assisted by the Fitment Committee and Joint Secretary (TRU-1) shall provide the necessary secretarial support to the Group.


(Dr.N. Gandhi Kumar)
Director(State Taxes)
Tel. 23092613

To,

1. All Members of GoM and Officers,
2. Revenue Secretary, North Block, New Delhi
3. Chairperson, CBIC, North Block, New Delhi
4. Joint Secretary(TRU-I), CBIC
5. All members of Fitment Committee
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

S-31011/12/2021-DIR(NC)-DOR

Government of India
Ministry of Finance
Department of Revenue

275, North Block, New Delhi

Date: 22nd November, 2021

OFFICE MEMORANDUM

Subject: Constitution of Group of Ministers (GoM) on Rate Rationalization - reg.

In partial modification to this Department's OM of even number dated 24.09.2021 regarding Constitution of Group of Ministers (GoM) on Rate Rationalization, it is stated that Smt. Chandrima Bhattacharya, Minister of State for Urban Development & Municipal Affairs Department (I/C), West Bengal is hereby appointed as Member of GoM on Rate Rationalization in place of Dr. Amit Mitra, Minister for Finance, West Bengal.

2. The other terms of reference (ToR) for the GoM on Rate Rationalization shall remain unchanged.
3. This issues with the approval of competent authority.

Sunil Kumar
22/11/2021

(Sunil Kumar)
Under Secretary (State Taxes-1)
Tel.011-23095376

To.

1. All Members of GoM and Officers
2. Revenue Secretary, North Block, New Delhi
3. Chairperson, CBIC, North Block, New Delhi
4. Joint Secretary, TRU-I, CBIC
5. All Members of Fitment Committee
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.

Annexure-C: Press Release on recommendations of the 46th GST Council Meeting



Ministry of Finance

Recommendations of 46th GST Council Meeting

Existing GST rates in textile sector to continue beyond 1st January, 2022

Posted On: 31 DEC 2021 4:29PM by PIB Delhi

The GST Council's 46th meeting was held today in New Delhi under the chairmanship of Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman.

The GST Council has recommended to defer the decision to change the rates in textiles recommended in the 45th GST Council meeting. Consequently, the existing GST rates in textile sector would continue beyond 1st January, 2022.

RM/KMN

(Release ID: 1786581) Visitor Counter : 614

Read this release in: Gujarati

Agenda item 15: Report of Group of Ministers (GoM) on GST System Reforms

1. The GST Council in its 45th Meeting appointed a Group of Ministers (GoM) vide OM dated 24.09.2021(Annexure 1) to analyse, to study and come up with ways and means to minimize tax evasion and offer other suggestions that can help avoid frauds in GST. The GoM was constituted by subsuming the earlier GoMs on IT challenges and revenue mobilization.
2. The **Terms of Reference** (TOR) of GoM were as below:
 - a. Review the IT tools and interface available with tax officers and suggest measures to make the system more effective and efficient including changes in business process;
 - b. Identify potential sources of evasion and suggest changes in business processes and IT systems to plug revenue leakage;
 - c. Identify possible use of data analysis towards better compliance and revenue augmentation and suggest use of such data analysis;
 - d. Identify mechanisms for better coordination between Central and State tax administration and tax administration of different States; and
 - e. Suggest timelines for changes recommended
3. The **first meeting** of the Group of Ministers was conducted on **21st October, 2021** under the Chairmanship of Shri Ajit Pawar, Hon'ble Deputy Chief Minister, Maharashtra where in following 7 focus areas were decided.
 - a. To consider and provide mechanism for better verification at the time of registration of taxpayers;
 - b. To consider ways and means of weeding out of fake registrants and non-compliant Taxpayers in the GST system;
 - c. To examine the ways and methods of improving of return filing compliance (R-1 & R-3B);
 - d. To examine methods of regulating ITC flow and checking of fake invoicing;
 - e. To analyse the non-reporting of supplies with emphasis on B2C supplies;
 - f. To consider ways and means of verification of high risk/high value transactions; and
 - g. To create a feedback loop with GSTN in order to improve the analytics on the data stored in GST System;
4. The **second meeting** of the Group of Ministers (GoM), was conducted on **10th February 2022**. In the second meeting, the GoM agreed on the need for using data analytics to curb GST evasion and to augment the GST revenues and also that, the GoM shall work on the tasks specified by the GST Council and continue to formulate suggestions and changes as per the directions of the GST Council.

5. Accordingly, after receipt of the suggestions of the States and due deliberations, the final set of agenda items i.e. total 16 items requiring action were identified. They were divided into two broad categories as follows:
- a. **Priority I item:** Five items were identified which are to be implemented on priority over the others.
 - b. **Priority II items:** Seven items can be activated on a secondary priority and to be implemented after completion of the Priority I items.
6. GoM has inter alia approved following decisions and recommendations for placing before GST Council: -
- a. Approved using mandatory biometric authentication for high-risk applicants for registration under GST.
 - b. Approved identifying risky behaviour of the new registrants/applicants using AI/ML and place the information on the back office for the field officer to carry out mandatory physical verification of these taxpayers.
 - c. Approved AI/ML based interdiction to generate MIS for officers to take post registration verification and other necessary actions for high-risk taxpayers.
 - d. Approved online/site verification with the help of Geo-Coding and for officers to carry out physical verification of high-risk taxpayers or getting correct address filed by the taxpayers.
 - e. Approved inclusion of Electricity Bill meta data (CA No.) as a data field during registration by new taxpayers. CA Number shall be verified to improve the quality of registered addresses in GST System.
 - f. Approved real time validation of Bank Accounts through integration of GST System with NPCI. The outcome of the verification shall be made available to the tax officers. GSTN to take necessary steps to make available information related to all bank accounts against a particular PAN.
 - g. Approved development of BI-BO Feedback Mechanism for capturing the feedback of leads generated by BIFA (and provided to tax officers in BO systems)

The following method of implementation, which has approval of the Chairman, GoM shall be followed with regard to the recommendations of the GoM:

- a. The GoM would submit its report to the GST Council periodically. Implementation of its recommendations, which may also involve legal changes, would first need in-principle approval of GST Council.
- b. It may be noted that legal changes for the recommendations of GoM would need to be discussed and detailed by the Law Committee. This may also

include some business process change as deemed fit by the Law Committee for implementation of the recommendations of the GoM.

- c. After detailing of the business process and legal changes where necessary, based on extent of change suggested in the Law Committee, it would be brought before the GST Council for its information/approval, as the case may be.
7. **Report:** The Report of the GoM on GST System Reforms (Annexure A) having approval of the Chairman based on the approved minutes of the meeting of the GoM is being tabled before the GST Council for approval.

1st Report of Group of Ministers (GoM) on GST System Reforms**CONTENTS**

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I. Introduction

1. The GST Council, in its 45th meeting (refer OM dated 24th September 2021, enclosed as Annexure 1), appointed a group of Ministers to analyze, study and come up with ways and means to make IT system efficient, minimize tax evasion and offer other suggestions relating to improving coordination among tax administration. Details of the terms of reference are available at Annexure 1. The constitution of the Group of Ministers committee, is as follows:

Sl. No.	Name	Designation	Convener/ Member
1.	Shri Ajit Pawar	Deputy Chief Minister, Maharashtra	Chairman and Convener
2.	Shri Dushyant Chautala	Deputy Chief Minister, Haryana	Member
3.	Smt. Ajanta Neog	Minister for Finance, Assam	Member
4.	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resources Management, Tamil Nadu	Member
5.	Shri Manish Sisodia	Deputy Chief Minister, Delhi	Member
6.	Shri Buggana Rejendranath	Minister for Finance, Planning and Legislative Affairs, Andhra Pradesh	Member
7.	Shri T.S. Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member
8.	Shri Niranjan Pujari	Minister for Finance and Excise, Odisha	Member

2. The first meeting of the Group of Ministers was conducted on 21st October, 2021 where GSTN gave an overview of the GST system and also sought guidance and directions of the Chair and its members on the manner of the proceedings of the GoM. The discussions and outcome of the 1st meeting are summarized as follows, where the topics and agenda items to be considered by the GoM were outlined:
 - a. To consider and provide mechanism for better verification at the time of registration of taxpayers (**FOCUS AREA A**),
 - b. To consider ways and means of weeding out of fake registrants and non-compliant taxpayers in the GST system (**FOCUS AREA B**),
 - c. To examine the ways and methods for improving return filing compliance (R-1 & R-3B)(**FOCUS AREA C**),
 - d. To examine methods of regulating ITC flow and checking of fake invoicing (**FOCUS AREA D**),
 - e. To analyse the non-reporting of supplies with emphasis on B2C supplies (**FOCUS AREA E**),
 - f. To consider ways and means of verification of high risk/high value transactions (**FOCUS AREA F**),
 - g. To create a feedback loop within GSTN system in order to improve the analytics on the data stored in GST System (**FOCUS AREA G**).
3. In preparation for the second GoM meeting, feedback was sought from the member States that constituted the GoM and also from the other States. The officers of the States shared their suggestions in line with the directions provided in the First meeting. All the suggestions were

discussed with IT team and follow up discussions with the officers of the States were held in order to arrive at a set of agenda items that could be placed before GoM for decision and directions. Accordingly, a set of agenda items were arrived at and divided into two broad categories as follows:

- a. Priority I item:**(Items for prioritized action) These were considered to be those items that were in line with the directions of the Chair of the GoM and due to the urgency regarding their nature were to be implemented in a shorter time frame.
 - b. Priority II items:** Items that are in line with the directions of the GST Council, but can be put-on a priority later than priority I items. These recommendations are to be implemented after completion of the Priority I action items. Discussion on these items was to continue so as to arrive at the final actionable recommendations to be implemented in the GST system, after the approval of the GoM.
4. The second meeting of the Group of Ministers (GoM), was conducted on 10th February 2022 (through video-conference) under the Chairmanship of Shri Ajit Pawar, Hon'ble Deputy Chief Minister, Maharashtra. In the second meeting, the GoM agreed on the need for using data analytics to curb GST evasion to augment the GST revenues by following the strategy outlined above.
 5. The GoM deliberated in detail on the issues that were shortlisted for Priority -I action, as an outcome of the discussion by the Officers of the States. Accordingly, 5 items were finalized as priority I items for the FOCUS AREAS A, B and D and further 5 items were classified as priority II items. The detailing of priority II item will be finalized in the third meeting of the GOM.
 6. This discussion and decision of the GoM on the priority I items are described in the following chapters.

II. Priority I action items: (Items for prioritized action):

Focus Area (A): Actions proposed for better verification at the time of Registration of Taxpayers

And

Focus Area (B): Actions proposed for weeding out of fake registrants and taxpayers in the GST system.

1. Integrated approach on improving Registration process: Using biometric authentication for high-risk applicants; (Item 1):

The GoM agreed that the registration process needed to include additional verification measures to authenticate genuineness of new taxpayers. Hence, two types of measures were agreed to be introduced– one that verified taxpayers prior to registration and two that verified them after the registration. The items to be introduced for registration prior and post registration in various recommendations are collectively tabulated below:

#	Registration Activities	Pre-Registration	Post-Registration
1	Bio-metric Authentication of applicant having Aadhaar	✓	✗
2	AI/ML based risk assessment for New and for Existing TPs based on Transaction Risk	✓	✓
3	Physical Verification of high risk taxpayers	✓	✓
4	Meta-data collection of supporting documents evidencing possession of PoB	✓	✗
5	Geo-coding of addresses (MMI)	✓	✓
6	Bank Account validation through NPCI	✗	✓

The proposal to add the feature of using biometric authentication for high-risk applicants was explained with the high-level business process flow design and its intended benefits. Integration of registration process with UIDAI was agreed by the GoM and the pilot for the same is proposed to be conducted by **Gujarat**.

Two important points which may be noted here are, one that it is proposed to collect additional information (Ref to Annexure 2) at the time of filing of registration application and two that even after Aadhar authentication, taxpayers who are high risk would need to undergo mandatory biometric authentication.

The high-level business process flow for Biometric verification of new applicants is shown in the following diagram: -

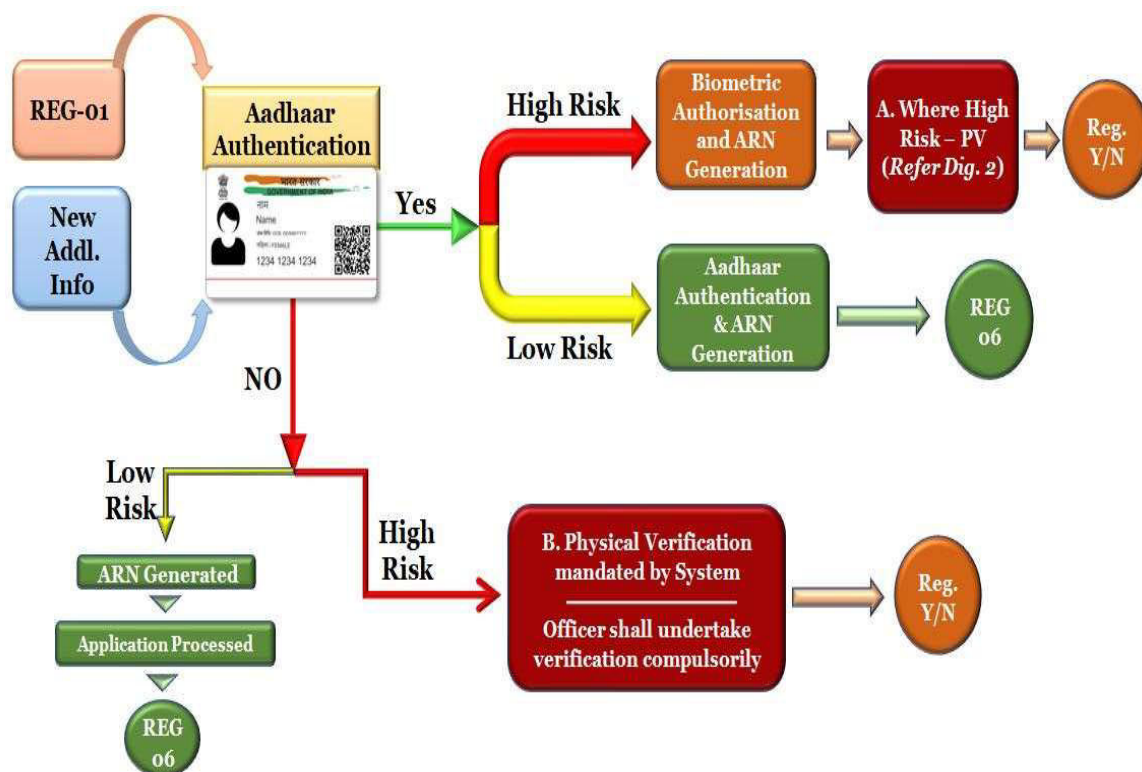


Diagram 1

Decision of GoM:

GoM approved using mandatory biometric authentication for high-risk applicants for registration under GST.

Note:

- After the meeting, State of Madhya Pradesh has also volunteered to do pilot project on similar lines for their new applicants.
- GSTN has initiated development of this process.

2. Risk Assessment of New applicants/registrants using Machine Learning (ML) and to carry out Mandatory Physical Verifications Assigned by the System (Item 2A):

The GoM discussed in detail the risk posed by the new registrants in the GST system. The new registrants are of two types. The first, who are absolutely new to GST Systems and second who already have GST registrations on the same PAN. The AI/ML based risk scores for the absolutely new registrants shall be based on new risk rules whereas, for the taxpayers applying for new registrations who have GST registration on same PAN elsewhere, shall, in addition to the risk rules built for the absolutely new tax payers, have another set of AI/ML based risks derived from their existing foot

prints in the GST System. It was agreed to introduce automatic identification of high-risk applicants under both categories based on the existing risk rules and the new risk rules identified.

Accordingly, it has been proposed that the AI/ML based interdiction of high-risk applicants (absolutely new and those who have GST registration on same PAN), shall be done by system automatically and officers shall take appropriate action including physical verification etc. in such cases.

Accordingly, GSTN shall develop an application and implement for identification of high risks category of new registrants/applicants in both Aadhar authenticated and non-authenticated cases and shall notify such new registrants/applicants for taking appropriate action by the registration approving authority. The above processes are defined in following diagram:

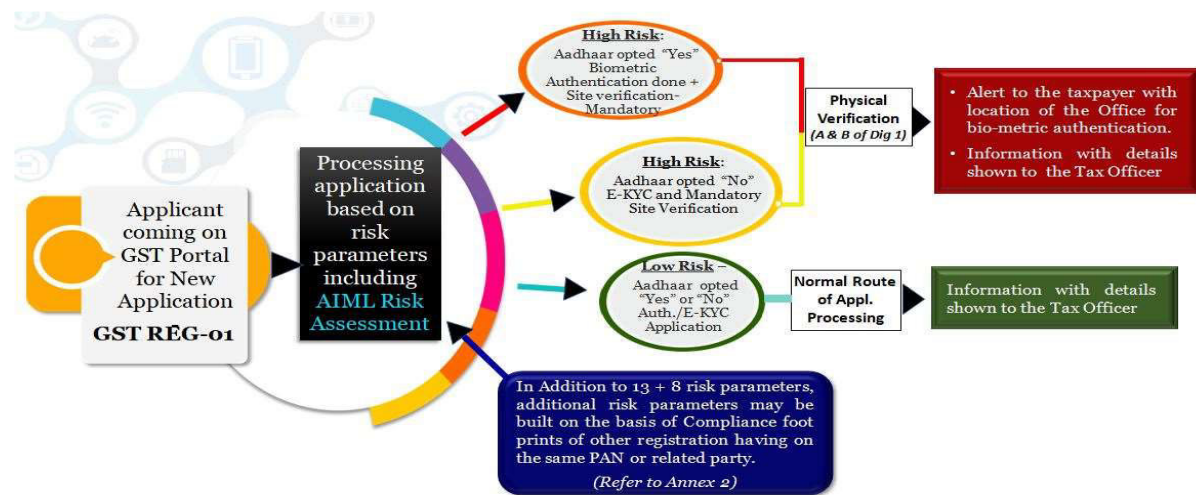


Diagram 2:

Diagrammatic representation of AI/ML based with assessment for taxpayers' pre-Registration

Decision of GoM:

GoM approved identifying risky behaviour of the new registrants/applicants using AI/ML and place the information on the back office for the field officer to carry out mandatory physical verification of these taxpayers.

3. AI/ML based interdiction grounded on suspicious behaviour of existing taxpayers to be used for carrying out system assigned verifications etc (Item 2B):

In line with the discussions of item 2A, the GoM agreed that, if the AI/ML based risk assessment of the existing taxpayers was implemented then various actions like cancellation of Reg. etc. (as per the procedure prescribed in law) could also be initiated for such identified high-risk businesses depending on the nature of the risk identified. This feature would mean designing an MIS to be generated for both items at 2A and 2B and task created at back office for further action by the

tax officers. Risk parameters shall be so chosen that the tasks created for the tax administrations are in line with their available manpower.

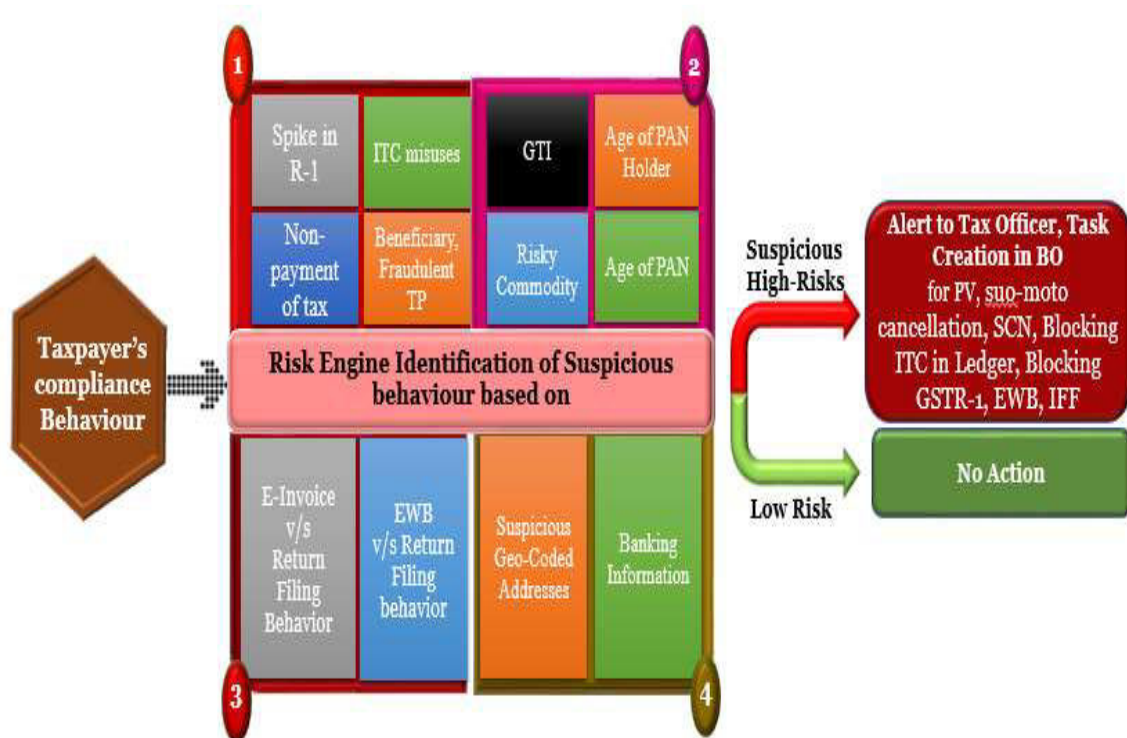


Diagram 3: Existing Taxpayers - Interdiction Based on Suspicious Behaviour

Decision of GoM:

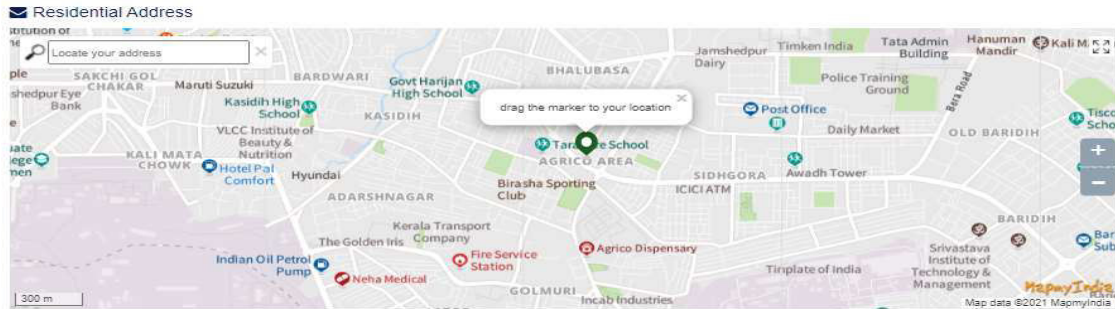
GoM approved AI/ML based interdiction to generate MIS for officers to take post registration verification and other necessary actions for high-risk taxpayers.

4. Online Address verification of New and Existing Taxpayers with the help of Geocoding (Item 2C):

The GoM was presented in detail the capabilities of linking GIS system with the registration process of taxpayers in GST System. This integration of GIS system enables the identification of taxpayer premises accurately on the map dynamically. Various colour-based schemes provide rich information to tax officers about the taxpayer, such as concentration, turnover, etc.

Therefore, the GoM desired that online address verification of new and existing taxpayers with geo-coded addresses (through integration with map-based information of the Map My India (MMI) be created as an interface in GST System. Based on leads thrown up by this mechanism, e.g., incomplete or wrong addresses, suitable action will be possible to be taken by the jurisdiction officers.

Such action could include directing the taxpayer to give complete address or to carry out premises verification, as the case may be.



Complete Match

Sl. No.	Field Name	As-Is Value	Geo-coded Value
1.	Country	India	India
2.	Pincode	831001	831001
3.	State	Jharkhand	Jharkhand
4.	District	East Singhbhum	East Singhbhum
5.	City/Town/Village	Jamshedpur, Agrico	Jamshedpur
6.	Locality/Sub-Locality		Agrico Area

Decision of GoM:

GoM approved online/site verification with the help of Geo-Coding and for officers to carry out physical verification of high-risk taxpayers or getting correct address filed by the taxpayers.

Note:

1. Geo coding of address of new taxpayers address has already been developed.
2. To provide self-service facility to the taxpayers, GSTN can develop an APP using which Lat, long and front view of the business can be captured. (This is a proposal by GSTN and not GoM).
3. To geo-code addresses of existing taxpayers, development is under progress.

5. Capturing Electricity Bill meta data (CA No.) during Registration process (Item 3):

GoM discussed the idea of using proxies for premises verification, in order to make registration process robust. The GoM suggested GSTN to collect meta-data supported by documents (electricity bill etc.) furnished by taxpayers at the time of registration that clearly identifies their place of business.

This would be used by the registration approving authority (jurisdiction officers) to verify the genuineness of the addresses of the premises thus help to reduce the count of non-existent taxpayers. The State of **Maharashtra** agreed to carry out the pilot project in this regard using data of electricity consumer number.

The captured data at the time of registration shall be shared in bulk in the pilot phase through servers and based on experience, business process will be finalised. It shall be endeavoured in future that the electricity consumer number is verified on-line during the registration process itself. The idea can be later expanded using other data points, where the State Governments have the data base.

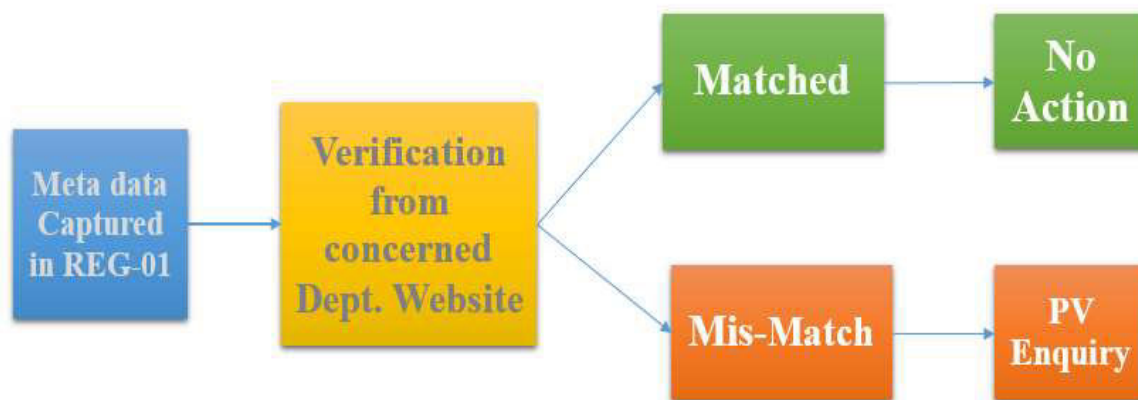


Diagram 5: Proposed workflow for Electricity CA verification

Decision of GoM:
GoM approved inclusion of Electricity Bill meta data (CA No.) as a data field during registration by new taxpayers. CA Number shall be verified to improve the quality of registered addresses in GST System.
<i>Note: Use case for meta data collection is under development. Madhya Pradesh has volunteered for API validation of the CA number with the State Electricity Board and Land Revenue Department whose feasibility of implementation is under examination at GSTN end.</i>

6. Validation of Bank Accounts of taxpayers through NPCI (Item 4):

The GoM discussed the possibility of Bank Account verification of taxpayer from authentic databases e.g., NPCI, CBDT etc. The GoM proposed to add a feature on online Bank Account validation by integrating GST system with NPCI. This integration with NPCI and CBDT would help in validating PAN based Bank Accounts of taxpayers and enable allowing only those refunds to go through, that meets the Bank Account validation criteria.

This system would highlight the high-risk category of taxpayers on a near real-time basis, for taking action by the tax officers. The result of bank account validation shall be shared by GSTN at the back office so that officers can decide on appropriate action to be taken such as directing taxpayer to update the Bank account, hold refund in the interim etc.

The need of making available information of all bank accounts against a particular PAN was emphasized by almost all the members of GoM and GSTN was directed to take necessary steps in this regard.

Input from GSTN					Validation from NPCI			
Header	Reference No.	PAN	IFSC Code	Account number	IFSC Bank Account validity	Primary Account holder PAN	Primary Account Holder Name.	Account Number
Parameter name	Type, Account ID, State Code							
Sample	OTH1038710	AAQFG7471F	BNPA0009008	3002133454545	V verified	Null Not available	Null Not available	V Verified

Diagram 6: An example of bank Account validation from NPCI

Details of Status

#	Head	Status
1	IFSC Bank Account Validity	Verified or not
2	Primary Account Holder Number	Available or not with Bank and correct or not
3	Primary Account Holder Name	Name matches or not
4	Bank Account Number	Account number matching or not

Decision by GoM:

GoM approved real time validation of Bank Accounts through integration of GST System with NPCI. The outcome of the verification shall be made available to the tax officers. GSTN to take necessary steps to make available information related to all bank accounts against a particular PAN.

Note: Bank account validation with NPCI is under development and will be implemented after approval of the council.

Focus Area D): Actions for regulating ITC flow & checking of fake invoicing

7. Lead based dashboard, Task & Case Creation and Feedback Mechanism in Back Office (Item 7):

The GoM was briefed in detail of the work of the BIFA module of GST system and the success achieved as a result of the leads generated to detect and prevent GST related frauds. The GoM was explained, about how the system is used to detect and identify suspicious behaviour of taxpayers. Examples of such leads are probable utilization of fake ITC, ITC passed on without actual supplies, spike behaviour in ITC passed/utilized, missing taxpayers, beneficiaries of Suo-moto cancelled taxpayers etc. These leads can be sent to senior officers in BO system and they in turn can create actionable tasks for jurisdiction officers. Officers after investigating task may create a case in BO system and provide feedback which will be captured automatically.

The GoM was briefed on how a feedback loop, if introduced in the lead generation flow could help further improve their accuracy. The tax officers would be able to comment the degree of success achieved by such leads and also provide suggestions on additional Use cases or ideas to detect and prevent fraud in advance. Senior Officers in the tax administrations would be able to generate adequate number of tasks to gainfully engage the manpower available with the tax administration.

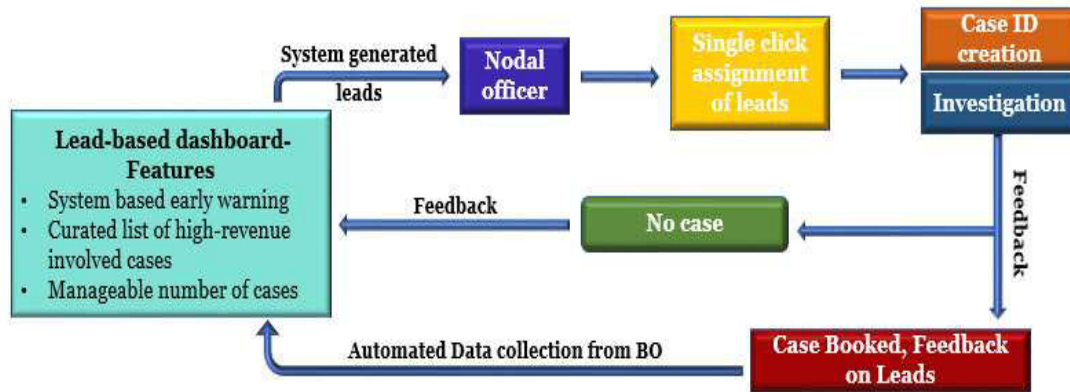


Diagram 7: Logic flow of introduction of feedback mechanism from tax officers

Decision of GoM:

GoM approved development of BI-BO Feedback Mechanism for capturing the feedback of leads generated by BIFA (and provided to tax officers in BO systems)

Note: GSTN has partially developed the proposed BI-BO integration and feedback mechanism.

III. Method of implementation

The following method of implementation, which has approval of the Chairman, shall be followed with regard to the recommendations of the GoM:

- I. The GoM would submit its report to the GST Council periodically. Implementation of its recommendations, which may also involve legal changes, would first need in-principle approval of GST Council.
- II. It may be noted that legal changes for the recommendations of GoM would need to be discussed and detailed by the Law Committee. This may also include some business process change as deemed fit by the Law Committee for implementation of the recommendations of the GoM.

- III. After detailing of the business process and legal changes where necessary, based on extent of change suggested in the Law Committee, it would be brought before the GST Council for its information/approval, as the case may be.

S-31011/12/2021-DIR(NC)
Government of India
Ministry of Finance
Department of Revenue

New Delhi, dated 24th September, 2021

OFFICE MEMORANDUM

Subject: Constitution of Group of Ministers (GoM) on GST System Reforms.

In its 45th meeting held on 17.09.2021 in Lucknow, the GST Council reviewed the current level of use of IT system in plugging leakages and the way forward. The Council acknowledged that better use of IT system is the best way to minimize evasion and at the same time ease compliance in GST.

2. The Council acknowledged that IT systems have stabilised and there is a need to introduce IT based checks and balances in the GST IT system. The Council also acknowledged use of data analysis like BIFA system of GSTN and stressed on expanding use of data analytics in increasing efficacy and efficiency of GST administration.

3. The Council decided that a GoM be set up to guide this process forward. In this context, Council has earlier set up two GoMs, one in IT challenges and another on revenue mobilization. There is substantial overlap between the work of these two GoMs and that of this proposed GoM.

4. Accordingly, a Group of Minister on GST System Reforms is constituted with following composition, subsuming the earlier GoMs on IT challenges and revenue mobilization:

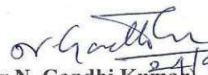
	Name	Designation and State	
1.	Sh. Ajit Pawar	Deputy Chief Minister, Maharashtra	Convenor
2.	Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3.	Sh. Dushyant Chautala	Deputy Chief Minister, Haryana	Member
4.	Sh. Buggana Rajendranath	Minister for Finance, Planning and Legislative Affairs, Andhra Pradesh	Member
5.	Smt. Ajanta Neog	Minister for Finance, Assam	Member
6.	Sh. T S Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member
7.	Sh. Niranjan Pujari	Minister for Finance and Excise, Odisha	Member
8.	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resources Management, Tamil Nadu	Member

5. The GoM on GST System Reforms shall—

- a. review the IT tools and interface available with tax officers and suggest measures to make the system more effective and efficient including changes in business processes;

- b. identify potential sources of evasion and suggest changes in business processes and IT systems to plug revenue leakage;
- c. identify possible use of data analysis towards better compliance and revenue augmentation and suggest use of such data analysis;
- d. identify mechanisms for better coordination between Central and State tax administration and tax administration of different States; and
- e. suggest timelines for changes recommended.

6. The GoM shall give its recommendation to the Council from time to time and shall review the implementation of reform measures approved by the Council. GSTN shall provide the necessary secretarial support to the GoM.


(Dr.N. Gandhi Kumar)
Director (State Taxes)
011-23092613

To,

- 1. All Members of GoM and Officers,
- 2. Revenue Secretary, North Block, New Delhi
- 3. Chairperson, CBIC, North Block, New Delhi
- 4. CEO, GSTN, Aerocity, New Delhi
- 5. GST Council Secretariat, New Delhi
- 6. PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi.
- 7. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi

Annexure-2

Registration Risk Parameters already implemented	
Risk Parameter	Description of Risk Parameter
RP 1	PAN not registered with the GST System, with low age
RP 2	Gross Taxable Income (GTI) of PAN of Registration Applicant as per Income Tax Returns
RP 3	Age of Promoters/ Partners
RP 4	GTI of Partners/Promoters
RP 5	Average Compliance Risk Rating of related GSTINs
RP 6	Age of Promoters/ Partners of related GSTINs
RP 7	GTI of Promoters/ Partners of related GSTINs
RP 8	Average Compliance Risk Rating of GSTINs related to Partners/ Promoters
RP 9	Number of related GSTINs having cancelled/ rejected registrations
RP 10	Taxpayer dealing in Evasion-Prone HSN/SAC
RP 11	Person supplying goods and/or services on behalf of other taxable person(s)
RP 12	Composition taxpayer who is a manufacturer
RP 13	Evidence submitted as proof for principal place of business – on consent /own/lease category and classification

Eight new Risk Parameters proposed to be collected at time of Registration	
Risk Parameter	Description of Risk Parameter
1	Capital Investment in the business which has applied for GST registration
2	Investment made out of your own savings or loan taken to start the business
3	Type of loan Secured Loan / Unsecured Loan / both
4	Name of the bank
5	CIBIL of the PAN of business a. CIBIL of one of the Promoter b. CIBIL of Primary Authorized Signatory (PAS)
6	Core business activity- Manufacturer/Service Providers/ Wholesale trader/ Retailer
7	Expected turnover for the first financial year
8	Expected value addition in the business or margin of sale



Agenda for

47th GST Council Meeting

28-29 June 2022

Volume – 4



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Discussion on Agenda Items

Agenda Item 16: Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming

GST Council in its 42nd meeting held on 5th and 12th October, 2020 recommended that a Group of Ministers (GoM) be constituted to look into the issues related to taxation of Casinos, Race Courses and Online Gaming.

2. Accordingly, as recommended by the GST Council, a Group of Ministers (GoM) on Casinos, Race courses and Online Gaming was constituted vide Office Memorandum dated 24.05.2021 (**Annexure A**) with following Terms of Reference (ToR) :

- a. To examine the issue of valuation of services provided by Casinos, Race courses and online gaming portals and taxability of certain transactions in a casino, with reference to the current legal provisions and orders of Courts on related matters.*
- b. To examine whether any change is required in the legal provisions to adopt any better means of valuation of these services.*
- c. To examine the administration of such valuation provisions if an alternative means of valuation is recommended.*
- d. To examine the impact on other similarly placed services like lottery.*

3. Further, GST Council in its 45th meeting held on the 17th September, 2021, deferred all the contentious issues, including relating to rates, involved in Casinos, Race Courses and online gaming viewing that the said GoM may also examine all such issues.

4. On 10th February 2022, GoM was reconstituted with Chief Minister of Meghalaya as Convener with the same Terms of Reference.

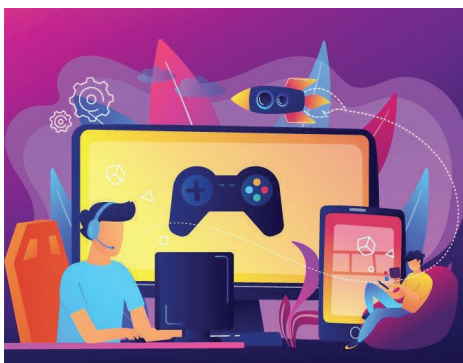
5. The GoM in its meetings on 2nd May, 2022 and 18th May, 2022 held in New Delhi deliberated on all the issues and has now submitted its report, which is enclosed as **Annexure B**. Final recommendations of the GoM are mentioned at para 12 of the enclosed report.

6. Accordingly, the report of the GoM is placed before the Council for consideration and taking a decision as appropriate.



सत्यमेव जयते

Report of Group of Ministers (GoM) on Casinos, Race Courses & Online Gaming



May, 2022

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1. Background:

1.1 Betting and gambling taxes have been subsumed in GST. Entry 62 of State List in the 7th Schedule of the Constitution which empowered the States to levy taxes on betting and gambling has been substituted by another entry by the 101st amendment Act to the Constitution. Subsuming of betting & gambling taxes along with VAT & other State levies and Services tax, as was imposed by Centre on service aspect of these activities, in GST, meant that entire gamut of these activities is subjected to GST.

1.2 Supply of actionable claims by way of both betting and gambling has been declared to be taxable in GST law. Goods have been defined to include actionable claims.

1.3 Accordingly, lottery, betting and gambling activities in casinos, horse racing and online gaming etc. have been subjected to GST. Certain issues have arisen as regards taxability, rate and valuation of these activities under GST. These issues have been widely litigated. Issues related to taxation of lottery have now been settled. Lottery which was earlier taxed at dual rates, depending on whether it was State-run or State-authorized, is now taxed at the single highest rate @ 28% on full face value as recommended by the earlier GoM on lottery. The challenge to levy of GST on lottery at full face value has been set aside by the Hon'ble Supreme Court in the case of Skill Lotto.

1.4 However, disputes remained in other arenas of betting and gambling. The questions raised by different sections of the stakeholders include whether a particular activity or game is an activity of skill or chance and whether it constitutes an actionable claim. If it is an actionable claim, whether it is a taxable actionable claim or outside the scope of GST or whether it is merely a supply of service. Related to these are the questions of their taxability, classification and the rates of GST applicable. The other major bone of contention is whether they should be taxed at full value of bets or wagers or only on the margin which the organizers get to retain after paying out the prizes to the participating players. It has been argued that these activities should be taxed on Gross Gaming Revenue (GGR) or margin instead of imposition of tax on the entire bet value (which is inclusive of Prize Money/pool). These matters have been extensively litigated.

1.5 It is in this background that the GST Council recommended in the 42nd meeting that a new GoM be constituted to look into the issues related to taxation of casinos, horse racing and online gaming.

2. Constitution & Terms of Reference of GoM on Casinos, Race courses and Online Gaming:

2.1 As recommended by the GST Council in its 42nd meeting held on 5th and 12th October, 2020, a Group of Ministers (GoM) on Casinos, Race courses and Online Gaming was constituted vide Office Memorandum dated 24.05.2021 [**Annexure-A**] with following Terms of Reference:

- a. To examine the issue of valuation of services provided by Casinos, Race courses and online gaming portals and taxability of certain transactions in a casino, with reference to the current legal provisions and orders of Courts on related matters.
- b. To examine whether any change is required in the legal provisions to adopt any better means of valuation of these services.
- c. To examine the administration of such valuation provisions if an alternative means of valuation is recommended.
- d. To examine the impact on other similarly placed services like lottery.

2.2 In the 45th meeting of the GST Council, held on the 17th September, 2021, the Council viewed that the said GoM may examine all contentious issues, including around rates, involved in online gaming, horse racing and casinos.

2.3 On 10th February 2022, GoM has been reconstituted [**Annexure-B**] with Chief Minister of Meghalaya as Convener with the same Terms of Reference. The reconstituted membership of the GoM is as follows:

Table 1: Members of reconstituted GoM

Sl. No.	Name	Designation and State	Details
1	Shri Conrad K. Sangma	Chief Minister, Meghalaya	Convener
2	Shri Ajit Pawar	Deputy Chief Minister, Govt. of Maharashtra	Member
3	Smt. Chandrima Bhattacharya	Minister for Finance, Govt. of West Bengal	Member
4	Shri Kanubhai Desai	Minister for Finance, Govt. of Gujarat	Member
5	Shri Mauvin Godinho	Minister for Panchayat Raj, Transport, Animal Husbandry & Veterinary Services, Protocol & Legislative Affairs, Govt. of Goa	Member
6	Dr. Palanivel Thiaga Rajan	Minister for Finance, Govt. of Tamil Nadu	Member
7	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs and Medical Education Departments, Govt. of Uttar Pradesh	Member
8	Shri Thanneeru Harish Rao	Minister for Finance, Telangana	Member

3. Issues before GoM:

3.1 The GoM observed that the following issues are referred to the GoM for consideration:

- i. Valuation, that is, whether the tax should be levied on entire amount charged for betting/gambling/online gaming or only on the commission or earnings of the service provider or platform fee.
- ii. Rate of tax that should apply on such activities.
- iii. Impact of adopting different valuation methods for taxing casinos, horse racing and online gaming, on other activities, particularly, lottery.
- iv. Legal provisions, that is, whether the recommendations of GoM satisfy the legal framework or not?

4. Statutory and legal framework:

4.1 **Relevant Acts:** The relevant Acts are the Central Goods & Services Act, 2017, Integrated Goods and Services Tax Act, 2017 and the corresponding State/UT GST Acts.

4.2 Statutory provisions relating to Actionable claim:

4.2.1 Actionable claims have been treated as goods in GST. Goods have been defined to include actionable claims:

“Goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52) of the CGST Act, 2017]

4.2.2 “Actionable claims” have been defined in section 2(1) of the CGST Act/SGST Acts, 2017 as below:

“Actionable claim shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;”

[Section 3 of Transfer of Property Act 1882 reads as below:

“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;”

4.2.3 Further, Schedule III of the CGST Act, 2017 and respective SGST Acts enlists the activities which are considered neither as a supply of goods nor as a supply of service.

“Schedule III: ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

.....

6. Actionable claims, other than lottery, betting and gambling.”

Accordingly, the actionable claim with respect to lottery, betting and gambling is taxable.

4.3 Services involved in these activities:

4.3.1 Besides actionable claim, these activities entail supply of services; say by way of organising, distribution, facilitation, conducting etc. While in activities like horse racing, casino, lottery etc., there is absolute clarity as regards classification of these services, certain doubts remain as regards classification of services involved in online gaming, i.e., heading 9996 vs 9984 of Service Accounting Code (SAC). This classification has bearing to the rates that would apply to the corresponding activities. For example, online gaming supplier sites claim that their services are of operating the portal, and hence online content/information technology classifiable under heading 9984 of S.A.C. (Telecommunications, broadcasting and information supply services). Competing SAC code is 9996, which, *inter alia* covers recreational and sporting services. The scope of these two SAC codes is given as below:

4.3.2 Explanatory notes to the relevant S.A.C.:

I. Heading 9996: Recreational, cultural and sporting activities

Explanatory Note to 9996:

- 999692 : *Gambling and betting services including similar online services*

This service code includes:

- i. on-line gambling services*
- ii. on-line games involving betting/gambling*
- iii. off-track betting*
- iv. casino and gambling house services*
- v. gambling slot machine services*
- vi. other similar services*

- 999694: *Lottery services*

This service code includes organization, distribution and selling services of lotteries, lottos and other similar items.

Thus, sub-heading 999692 includes gambling and betting services including similar online services. Online gaming involving betting services is specifically included in this sub-heading as is evident from Explanatory Notes to SAC.

II. Heading 9984: Telecommunications, broadcasting and information supply services

99843 : online content services

998439 : Other on-line contents nowhere else classified

Explanatory Notes to SAC 998439: Other on-line content n.e.c.

This service code includes games that are intended to be played on the Internet such as role-playing games (RPGs), strategy games, action games, card games, children's games; software that is intended to be executed on-line, except game software; mature theme, sexually explicit content published or broadcast over the Internet including graphics, live feeds, interactive performances and virtual activities; content provided on web search portals, i.e. extensive databases of Internet addresses and content in an easily searchable format; statistics or other information, including streamed news; other on-line content not included above such as greeting cards, jokes, cartoons, graphics, maps

Note: Payment may be by subscription, membership fee, pay-per-play or pay-per-view.

This service code does not include:

- software downloads, cf. 998434
- on-line gambling services, cf. 999692
- adult content in on-line newspapers, periodicals, books, directories, cf. 998431

4.4 GST Rate structure:

Table 2: Actionable claim (Goods)

Notification No. and Date	Schedule	S.No. of Notfn.	Chapter / Heading/ Sub-Heading/ Tariff item	Description of Goods	Rate (CGST+ SGST)
1/2017-Central Tax (Rate) dated 28th June, 2017	IV	228	Any Chapter	Lottery	28%
		229	Any Chapter	Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club	28%

Table 3: Services involved in these activities
[Both SACs 9996 and 9984 are discussed below in view of doubts raised regarding classification of services in online gaming]

Notification No. and Date	Sl. No.	Chapter, Section or Heading	Description of Service	Rate (CGST+SGST)
11/2017-Central Tax (Rate) dated 28th June, 2017	34	Heading 9996 (Recreational, cultural and sporting services)	(iia) Services by way of admission to (a) casinos or race clubs or any place having casino or race clubs or (b) sporting events like Indian Premier League	28%
			(iv) Services provided by a race club by way of totalisator or a license to bookmaker in such club	28%
			(v) Gambling	28%
	22	9984 (Telecommunications, broadcasting and information supply services)	(i) Supply consisting only of e-book	5%
			Telecommunications, broadcasting and information supply services other than (i) above	18%

4.5 Valuation of supplies of these activities:

4.5.1 Valuation of taxable supplies is governed by section 15 of the CGST Act, 2017. As per section 15(1), the valuation of a supply shall be transaction value i.e., price actually paid or payable for the said supply. Relevant provisions are reproduced for ready reference as follows:

“Section 15: Value of Taxable Supply.-

- (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*
- (2) The value of supply shall include –*
 - (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
 - (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if-

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.”

4.5.2 Section 15(5) confers power on the Government to provide that value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed. Accordingly, in exercise of this power, rule 31A of CGST/SGST Rules has been prescribed as below:

Rule 31A. Value of supply in case of lottery, betting, gambling and horse racing.-

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.

(2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

Explanation:- For the purposes of this sub-rule, the expression “Organising State” has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.

(3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

4.6 Earlier clarifications issued in the matter:

4.6.1 Circular 27/01/2018 – GST dated 04.01.2018 has been issued clarifying *inter-alia* on valuation of services by horse racing club and casinos as follows:

- *GST at the rate of 28% would apply on entry to casinos as well as on betting/gambling services being provided by casinos on the transaction value of betting, that is, the total bet value in addition to GST levy on any other services being provided by the casinos (such as services by way of supply of food/drinks etc. at the casinos). Betting, in pre-GST regime, was subjected to betting tax, on full bet value.*
- *Further, GST would be leviable on entire bet value, that is, total of face value of any or all bets paid into the totalisator or placed with licensed bookmakers, as the case may be. Illustration: If entire bet value is Rs 100/-, GST leviable will be Rs. 28/-.*

5. Jurisprudence & Court Cases:

5.1 Issues raised in respect of lottery, race course, gambling, betting, online gaming are intertwined. The Courts have examined these issues in detail and certain issues have been finally settled while a few continue to be the subject matter of litigation. Some of the relevant cases are:

- Sunrise Associates Vs Govt. of NCT of Delhi & Ors- (2006) 5 SCC 603(SC): In this case, the issue before the Hon'ble Court was- whether the lottery tickets were goods and were liable to sales tax as decided by the Hon'ble High Court considering the aspect that two rights involved in lottery (i) the right to participate in the lottery draw, and (ii) the right to win the prize, are separable rights.

The Constitution bench of the Hon'ble Supreme Court held that *right to participate* and *right to win prize* are inseparable rights conferred on a lottery buyer and *entire* consideration is paid for the chance to win.

- Skill Lotto Solutions Pvt Ltd Vs Union of India- 2020 (43) G.S.T.L. 289 (S.C.):

The issues before the Hon'ble Court in the writ Petition (Civil) No. 961 of 2018, (decided on 3-12-2020) , *inter alia*, were- whether the inclusion of actionable claim in the definition of goods is contrary to the legal

meaning of goods and unconstitutional; whether the judgment of the Hon'ble Supreme Court in case of Sunrise Associates that *lottery is an actionable claim* is proposition of law; and whether while determining the face value of the lottery tickets for levy of GST, prize money is to be excluded for purposes of levy of GST.

The Hon'ble Supreme Court held that-

“78.....When there are specific statutory provisions enumerating what should be included in the value of the supply and what shall not be included in the value of the supply we can not accept the submission of the petitioner that prize money is to be abated for determining the value of taxable supply. What is the value of taxable supply is subject to the statutory provision which clearly regulates, which provision has to be given its full effect and something which is not required to be excluded in the value of taxable supply cannot be added by judicial interpretation.

...

80. The value of taxable supply is a matter of statutory regulation and when the value is to be transaction value which is to be determined as per Section 15 it is not permissible to compute the value of taxable supply by excluding prize which has been contemplated in the statutory scheme. When prize paid by the distributor/agent is not contemplated to be excluded from the value of taxable supply, we are not persuaded to accept the submission of the petitioner that prize money should be excluded for computing the taxable value of supply the prize money should be excluded. We, thus, conclude that while determining the taxable value of supply the prize money is not to be excluded for the purpose of levy of GST.”

Thus, in this case, the Hon'ble Supreme Court upheld the validity of statutory provisions on valuation including rule 31A for valuation holding that GST is payable on 100% of the face value of bet or money as provided for in the legislation.

- Gurdeep Singh Sachar v/s Union of India- 2019 (30) G.S.T.L. 441 (Bom.)(Dream 11 case): The issues before the Hon'ble Bombay High Court in the criminal Public Interest Litigation Stamp No. 22 of 2019, (decided on 30-4-2019) were whether the activities of Dream11 amount to 'Gambling'/'Betting' and whether there is any merit in the allegation of violation of rule 31A(3) of CGST Rules, 2018 and erroneous classification. While deciding the issue at hand, the Hon'ble Court, also looked at GST levy, and observed as follows:

“It can be seen that success in Dream 11's fantasy sports depends upon user's exercise of skill based on superior knowledge, judgment and attention, and the result thereof is not dependent on the winning or losing

of a particular team in the real world game on any particular day. It is undoubtedly a game of skill and not a game of chance.”

“... Therefore, this activity or transaction pertaining to such actionable claim can neither be considered as supply of goods nor supply of services, and is thus clearly exempted from levy of any GST.”

In this way, the Hon’ble Court observed that the activities of Dream11 (online gaming) are ‘game of skill’ and thus, actionable claim (prize pool) in online gaming is not an actionable claim as intended to be taxed in GST (Entry 6 of the Schedule III refers). Hence, the Hon’ble Court observed that prize pool is exempt from levy of any GST.

Special Leave Petition (SLP) was filed against this order [SLP (Crl.) Diary No. 42282 of 2019]. Vide order dated 06.03.2020, operation of impugned judgment and order passed by the Bombay High Court has been stayed by the Hon’ble Supreme Court.

- Bangalore Turf Club before the Hon’ble Karnataka High Court 2021 (51) G.S.T.L. 228 (Kar.): The issues before the Hon’ble Bangalore High Court in the writ Petition Nos. 11168 & 11167 of 2018 (T-RES), decided on 2-6-2021 were whether rule 31A(3) of the CGST Rules is *ultra vires* the CGST Act and whether the Turf Club is liable to pay GST on the commission set apart or on the total amount collected in the totalisator.

The Hon’ble Court held that the commission held by the Club can only be subjected to GST, not the entire bet value. The relevant extract of the judgment is as follows:

“Rule 31A(3) completely wipes out the distinction between the bookmakers and a totalisator by making the petitioners liable to pay tax on 100% of the bet value. It is the bookmakers who indulge in betting and receiving consideration depending on the outcome of the race, irrespective of the result. In contrast, the race club provides totalisator service and receives commission for providing such service. Therefore, there is no supply of goods/bets by the petitioners as defined under the Act.

.....

Rule 31A(3) travels beyond what is conferred upon the Rule making authority under Section 9 which is the charging section, by way of an amendment to the Rule. The totalisator is brought under a taxable event without it being so defined under the Act nor power being conferred in terms of the charging section which renders the Rule being made beyond the provisions of the Act.”

The decision in the case has been stayed by the Divisional bench of the Hon'ble Karnataka High Court [Union of India v. Bangalore Turf Club Limited - 2021 (55) G.S.T.L. J125 (Kar)].

6. International Practice:

6.1 There is no uniform international practice. If there is any uniformity, it is in that most countries levy multiple taxes on betting and gambling and the cumulative incidence of taxes on them is quite high. They subject these activities to GST, VAT or Sales Tax as well as several kinds of betting, gambling and sweepstakes duty and taxes such as Betting Tax, Stamp Duty [which may be charged on winnings too], Gaming Tax, Pool Betting Duty, Casino Duty etc.

6.2 While GST or VAT is levied on supply of goods and services elements in these activities, the bets, wagers & stakes are subjected to multiple betting and gambling taxes. In some of the jurisdictions, bets and wagers have been expressly excluded from the scope of VAT or GST by law and thus in those countries, GST or VAT cannot be levied on the value of bets and wagers. They have to be excluded from the taxable value of supplies by casinos, race courses, online gaming etc. The betting and gambling taxes, on the other hand, are levied on GGR or on full value of bets, wagers or stakes in varying practice. These taxes cascade on each other. Where these are levied on GGR or net value, the incidence on such GGR is kept quite high in most cases as compared to taxation of normal supplies.

6.3 As far as taxation of actionable claims is concerned, India is uniquely placed. Actionable claims in the form of lottery, betting and gambling have been consciously brought in the fold of GST. Now, with the advent of GST, only a single levy of GST is applied in place of multitude of taxes in pre-GST regime ranging from entry tax, statutory entry fee collected by Government, surcharge thereon, VAT, entertainment tax, betting/gambling tax, services tax and embedded excise duty on inputs. Therefore, the international practice with regard to the levy of GST/VAT on these actionable claims has little relevance for India. The Hon'ble Supreme Court has also rightly held in Skill Lotto case that we will have to find answers to questions before us in our own statutes. The practice in other countries is guided by their own laws which are different from ours.

7. Pre-GST taxes on these activities:

As stated above, in pre-GST regime, multitude of taxes were imposed on these activities. For example:

- The taxation structure in horse racing was in a way to levy service tax and entertainment tax on entry ticket, service tax on tote commission and license fees charged from bookie and betting tax levied by the States on betting /wagering.
- In case of casinos, entertainment tax and luxury tax were levied. For example, Rs 1000/- per person visiting the casino plus 15% on sale of chips/coins or the receipts received by operators towards casino games were charged.
- Online gaming is a new phenomenon/activity, the contours of its taxation may not have been well established in pre-GST regime.

8. Discussion:

8.1 The GoM deliberated upon the questions entrusted to it at great length during the course of the two meetings held in New Delhi on 2nd May, 2022 and 18th May, 2022. The general view was that all these activities, because of their nature and negative externalities, should be levied a higher incidence of tax. The society at large is the biggest stakeholder in them. These activities involve element of financial risk and are addictive. Concerns were raised especially regarding online gaming, its adverse impact on the society at large and particularly the youth, due to its addictive nature which affects the financial and overall well-being of the players. It was pointed out that unlike casinos, and horse racing, the activity of online gaming is available 24 by 7, attracting the youth of this country into addictive activities. It was the unanimous decision of the GoM that the activities of casinos, race courses, and online gaming should be subjected to GST at the highest rate of 28%. It was also noted that there should be uniformity in rate of taxation on all actionable claims in any activity involving prize payouts/betting in anticipation of winning. In other words, online gaming, casino, horse racing and lottery etc. are to be similarly taxed.

8.2 As regards the question whether the activities of horse racing, casinos and online gaming are activities of games of skill or chance, the general view was that this should not be relevant for GST regime. In all probability, these may have some elements of both. So long as there is betting for monetary winnings, the activities should be similarly taxed, including actionable claims forming part of these activities.

8.3 It was observed that online gaming platforms have been paying 18% GST on platform fees alone and not on the full value including prize money. The argument of the industry is that the games are games of skill and not of chance as decided by various judicial pronouncements. For instance, in the Gurdeep Singh Sachar v/s Union of India- 2019 (30) G.S.T.L. 441 (Bom.) (Dream 11 case), the Hon'ble Bombay High Court observed that the activities of Dream11 (online gaming) will not fall under gambling but these activities are 'games of skill'. However, operation of this judgment has been stayed by the Hon'ble Supreme Court vide order dated 06.03.2020.

8.3.1 These online games are played with money at stake in anticipation of prize payouts/winnings such as fantasy sports (Dream 11), rummy, poker etc.

8.4 It was observed that while casinos pay full GST @ 28% on betting and gambling, online gaming sector, which has grown exponentially even during the COVID period, does not pay the same on the ground that online games are actionable claims other than betting and gambling. It was strongly felt that there should be uniformity in taxation. It was noticed that other gaming sectors have contested the payment of tax at lower rate by online gaming and that too only on platform fee though online gaming also involves betting/playing for winnings like any other activity such as in casinos. Therefore, online gaming should be taxed in the same way as casinos irrespective of whether these are games of chance or skill. The GoM was of the unanimous view that any such difference, if it exists in the GST law, differentiating the activities as games of chance or games of skill, be eliminated for application of uniform taxation on all these activities. The GoM, on detailed deliberation, referring to the discussion in GST Council on lottery, the statutory provisions and rules etc. and the law position that has been settled in lottery, was also of the view that the intention had been to apply 28% GST rate on all these activities.

8.5 Having taken a view on the basic issue of rate structure and uniformity of taxation, the questions that were to be decided by the GoM were:

- (i) whether the activities should be taxed on full value of bets/wagers or on GGR/margin?
- (ii) manner of taxation of associated activities, particularly the entry to a casino, wherein casino charges an amount for entry which is inclusive of entry fee, food coupon, boat ride to offshore casino and certain amount of chips for playing. This amount is to be paid by any person willing to have access to casino.

8.6 **Discussion on valuation:** There was broad agreement that mechanism of valuation should be simple and easy to calculate, in conformity with law and at the same time should not render the industry unviable. However, the opinion on how to achieve these objectives was divided. One view was that taxing these activities on full value of bets or wagers will make these activities unviable and may even lead to their closure. The other equally strong view was that they should be taxed on full value without reducing the prize pool or pay-out like lotteries as the same has been upheld by the Hon'ble Supreme Court in Skill Lotto. This question was more complex and needed a detailed examination of the legal provisions, international practice, judgments of the courts etc. It had also to be ensured that any decision with regard to valuation of the said activities does not have an implication for taxation of lottery which is now a settled issue.

8.7 The GoM directed the officers to examine the legal and financial implications of taxing these activities on GGR or net value and to come up with a mechanism of arriving at GGR or net value, for the GoM to take a holistic view on the matter. The GoM Secretariat invited inputs on these issues from the member States and a meeting of officers was held to discuss the issues on 13th May, 2022.

8.8 The issues which were discussed, its analysis and emerging views in the officers' meeting were presented before the GoM by the Secretariat in detail. The submissions placed before the GoM as arising out of deliberation in Officers Committee, *inter alia* included,-

(i) All the three issues, as above in para 8.7, are inter mingled and inter-related. They cannot be decided independently of each other. While an argument has been put forth by the trade in various forums that if betting and gambling are taxed on full value, the organisers will have to pay from their pockets, this view is not correct. GST being a pass-through tax, the incidence of entire GST has to be borne by the players, and its incidence does not fall on the suppliers involved in these activities.

(ii) However, if share of taxes increases in the bet amount, the prize pool amount shrinks, and therefore, winning amounts becomes lesser. Therefore, this may discourage the players which may impact the trade in terms of volumes of trade. Further, imposition of tax on full value may push certain activities to grey market.

(iii) It was felt though that the argument of substitution and shifting (including to the grey market) is valid for any supply, particularly those which attract higher duties and meant for consumption of items, like tobacco, cigarettes, bidi, or even items like auto parts or for that matter any supply

meant for consumers. The general philosophy in GST has been that the items with negative externalities are to be taxed at the highest rate.

(iv) As regards the international tax regimes, India's GST regime is somewhat unique in so far as it taxes actionable claims. Actionable claims are taxable under GST. Further, in India, GST is the only tax that supply of these activities bear. Other countries may tax the activities differently, based on the ambit and objectives of their respective tax regimes. Illustratively, a country may choose to apply GST/VAT on service element leaving aside the prize pool from the scope of GST/VAT, but may simultaneously impose betting tax, which may again be on gross gaming revenue or on the full bet value. In addition, in varying prevailing practices, countries opt to impose pool tax, gaming tax, stamp duty, casino tax, local duties and other taxes. Beside this, certain countries impose flat tax on winning amount (in addition to tax on incomes). Such taxes cascade on each other and the cumulative incidence of tax on betting and gambling is quite high.

(v) In pre-GST regime, India's tax regime was also fragmented with multitude of taxes on these activities. The State levies were also attracted on full face value, entire consideration, chip sales value in most cases.

(vi) While GGR may be a measure of service element in activities for the purposes of GST/VAT (with other levies side by side); in India, the collective decision of the Union and the States was that actionable claim will also be taxed under GST. Unlike Service Tax where only service component was taxable, in GST it has been decided to tax supply of actionable claims also. By removing the prize payouts from the value of bets, it will result in effectively removing actionable claims from the value of supply, defeating the very legislative intent of bringing actionable claims within the purview of GST. If the tax has to be levied only on the platform fee, then it will amount to taxing only the service component of the supply. Supply of actionable claims will remain untaxed.

(vii) Applying GST only on platform fee for online gaming, GGR for casino etc. on the ground that tax should only be levied on the consideration accruing to service provider (thus leaving the prize pool out) will have wider implication for other services as well. For example, in case of manpower supply agencies, where agencies argue that they get only commission, while the salary goes directly to the manpower deployed. Persons supplying the manpower to the manpower agency are below the threshold limit. However, GST is charged on entire value including the amount passed on by the agency to manpower as salary. E-commerce service providers like Ola, Uber also claim themselves to be platform service providers. However, tax is chargeable as prescribed in the law. It was also discussed that in case of the activities

under consideration, the full amount of bet or wagers represents the consideration paid by a person for supply of the actionable claim in the form of chance to win. The prizes paid to others do not have any bearing on the value of the supply made to a person who may or may not win.

8.9 Written inputs/comments were received from the Hon'ble Finance Minister, Tamil Nadu. He suggested that a potential methodology could be developed which would bridge the seemingly irreconcilable conflicts between maintaining consistency with the Hon'ble Supreme Court's ruling on Lotteries; holding firm to the principle of not making Chance/Skill distinctions while keeping GST revenues buoyant, and giving the gaming industry relief by taxing only GGR, thereby improving the attractiveness of formal channels of betting and enabling growth in volumes. Accordingly, he proposed to tax the full-face value of each betting stake/ticket or total value of Chips/Credits purchased at ENTRY/PER DAY at 28 % and for every winner, rebate the actual GST paid on the purchase of the ticket/chips/credits at entry to certain limit.

9. The legal framework, as detailed above was examined and debated by the GoM at length.

9.1 The GoM examined the essential question as to whether actionable claim could be left out of tax under GST. Definition of goods includes actionable claims. Schedule III of CGST Act provides that actionable claim in the form of betting and gambling will be taxed. Therefore, in GST actionable claims involved in betting and gambling are taxable. The GoM observed that intention is clearly to impose GST on actionable claim.

9.2 The GoM also observed that the Lottery issue is well settled now. Lotteries attract GST on the face value. The entire actionable claim involved in lottery is thus taxed. This levy has been upheld by the Hon'ble Supreme Court in the Skill Lotto case. It was also observed that while in respect of lotteries too, it was argued that imposition of GST at 28% on face value would lead to shift to grey market (matka, chit etc.) and lottery industry would suffer which would have adverse implication on GST revenue. However, revenue from lottery has shown a healthy growth and certain States are earning good revenue from lottery with good growth, even in COVID period. It was reiterated by certain Members in the GoM that uniform taxation on all these activities would bring in parity between lottery and other activities under examination by the GoM. Any deviation from taxation of face value approach will create distortion where lottery traders would also seek similar treatment. This would not be desirable. Lottery taxation has been settled after prolonged discussions and litigation.

9.3 In this context, it was also observed by some members that if law requires taxation of actionable claim as supply of goods, the same should appropriately be subject to GST. Unless law is changed, it cannot remain un-taxed. Under present law, supply of actionable claim is taxable and according to GST law, it is applicable on entire value.

9.4 As regards the stand of online gaming industry that the actionable claims involved in their activity are outside betting and gambling and thus not taxable, it was stated that Schedule III declares not only gambling as taxable but also betting. Online gaming involves betting also. The legal implication of reducing the prize value or the prize pool from the taxable value would be that the actionable claims involved in betting and gambling, which the Union and the States had collectively decided to tax under GST as supply of goods, will remain un-taxed. This will defeat the purpose of subsuming betting and gambling taxes in GST.

9.5 As regards the argument that in case of skill-based online games, since platform owners have no right or title over the prize pool amount as it is sometimes held by custodian or third party, so prize pool does not form part of the value of supply of service, it was stated that what law envisages, in terms of provisions as stated above, is not only to tax the services provided by way of operating the platform but also the actionable claim involved in these activities. The modalities of maintenance or management of prize-pool does not have any bearing in this regard. Prize pool is envisaged to be taxed under GST as actionable claim. It was also observed by the members that the GST is to be ultimately borne by the player, being a pass-through tax.

10. Before coming to the issue of valuation of the activity of online gaming, horse racing and casinos (GGR vs full face value), the GoM examined certain related issues peculiar to Casino, which are as follows:

10.1 **Tax rate on entry fee in Casinos:** Tax rate on entry fee when such entry fee consists of charges towards bouquet of supplies clubbed with the supply by way of entry to casinos.

CCT Goa informed that casinos offer a bundle/bouquet of goods and services. The activities in a casino therefore are rendered complex due to this bundling. There are further complexities as casinos engage in a physical activity. The consideration charged by the casinos for entry into the casinos may also include complementary food, liquor, accommodation etc. Few of the practices/models being followed by casinos which were discussed are explained below:

Model I - The casinos charge a fixed fee for entry to the casinos and supply food and drinks as complimentary. In other words, the price of food and drinks are included in the entry fee. GST is paid on the entire amount at 28%. The chips or coins for betting and gambling need to be purchased separately. The guest is not given a choice to choose which services he wants to avail and which he does not want to avail.

Model II - The casinos charge a fixed fee for entry to the casinos and supply food and drinks as complimentary. At the time of paying the taxes, the casinos split the entry fee charged into different components such as entry to the entertainment venue, food, liquor, ferry services, sale of non-redeemable coins etc. In this case, the casino pays different GST on different services. In this model also, the guest is not given any choice.

Model III - The casinos charge separate amounts for entry to the casinos, for drinks and liquor and ferry services from jetty to the off-shore casinos. They pay GST @ 28% on the amount charged for the entry to casinos and at 5% on restaurant services. The ferry services are treated as transport of passengers by inland waterway which is claimed to be exempt. In this case, the guest is at liberty to choose which services to avail and which to forego.

10.2 On this issue, there was general agreement that admission to casinos attracts GST @28%. Therefore GST @ 28% should be charged on the price charged for the entry ticket to casinos. Where a single fixed price or fee is charged for entry to the casino and supply of food and drinks or other goods or services such as transportation from jetty to the off-shore casino or certain amount of chips is complimentary or included in the price of entry ticket, it is a case of mixed supply and GST @ 28% must be charged on the entire amount charged for entry. Similarly, where the entry to a casino is allowed against a price subject to the condition that the guest or the customer will have to buy a certain minimum amount of food, liquor or other services or goods, the amount charged for entry plus the amount charged for such minimum compulsory purchases constitutes the consideration for the mixed supply and must be charged to GST @28%. Supplies made independently of the entry ticket shall be taxed at the rates as applicable on them. The same principle will apply to admission to race courses and other similar events.

10.3 GST on subsequent rounds of betting in Casinos: Another important question related to casinos examined by the GOM was whether the tax should be levied on value of bet placed in every round of betting and gambling played in the casino including the rounds played with winnings of the previous games. On this issue, the GoM felt that it has to be mindful of the need to maintain a balance between revenue collection and the viability of the casino industry. Taxing each round, once tax is collected at entry on the purchase of chips, is neither feasible nor desirable. This will make the casinos unviable.

It was also felt that the right to play with the winnings of the previous game was inherent in the rights acquired by the players against the price paid for the chips/tokens purchased from the casinos.

10.4 In view of the above, a consensus emerged that the tax should be levied only on the value of chips/coins purchased from the casino. The bets or wagers placed in subsequent rounds of betting with the chips or tokens won in the previous rounds should not form part of the taxable value of betting and gambling in the casinos and should not be subject to tax.

11. During the discussion, following aspects were specifically deliberated by the GoM:-

- i. Legal implications if net value is adopted;
- ii. Financial implication if net value is adopted;
- iii. Possibility of determination of net value.

11.1 Legal implications if net value is adopted:

Law envisages taxation of services associated with lottery, betting and gambling and also the actionable claims supplied in the form of chance to win in the lottery, betting and gambling. The legislative intent is clear and it seeks to tax these actionable claims as expressed in Entry 6 of Schedule III to the CGST Act, 2017. Taxing net value effectively means not taxing actionable claims. Net value represents the value of services alone. Thus, taxing betting and gambling on net value will defeat the purpose of subsuming of taxes/duties on betting and gambling in GST and render the legislative intent to tax actionable claim in GST ineffective. The law [provisions as stated above in para 4.5] also requires levy of GST on full value of the bets placed. Net value taxation would be a deviation from the present law position.

11.1.1 Any decision on reducing the value of prize payouts or prize pool from the taxable value of betting and gambling in casino, online gaming, and horse racing will have implications on similar activities, particularly lottery. The provisions related to actionable claims are common to all such activities. The implications may be two-fold, namely, (a) Litigation in lottery, and (b) Substitution.

11.1.2 In this regard, the issue pertaining to valuation of supply of lottery on its face value (cum-value basis) was settled after extensive deliberation and discussions in GST Council and has been upheld by way of judicial pronouncements by the Hon'ble Supreme Court. The GST Council

raised the GST rate on state-run lottery from 12% to 28% and affirmed it on the face value. Further, there were apprehensions regarding revenue loss and viability of lottery business, when decision was taken to tax lottery at face value. However, lottery has continued to grow despite stiff competition from online gaming etc. and revenue has increased even during COVID times. For instance, revenue from lottery as reported by West Bengal has steadily increased, from about Rs 3000 cr in 2019-20 to about Rs 4000 cr in 2021-22.

11.1.3 Therefore, one view was that unless law is amended, it may not be feasible to impose tax on net value. However, if law is changed, it may not be desirable to keep lottery on a different footing to tax on face value while others on net value. Lottery has already yielded good revenue to the States (on face value taxation); hence lottery need not be touched.

11.1.4 A view was also expressed, in the context of legal and other implications, as to whether distinction needs to be made between online gaming on the one hand and casinos & horse racing on the other, which are performed in a physical setting and are integral to other sectors of the economy such as travel and tourism, hotel accommodation etc. While it may be alright to tax online gaming on full value, the possibility of prescribing a different method of valuation of the activities in casinos, horse racing may be considered. However, it was decided that the recommendations regarding valuation would be made in conformity with the statutory & legal framework and the judgment of the Hon'ble Supreme Court since it is the law of the land.

11.1.5 A relevant consideration, however, was the impact of 28% on face value in case of casino, horse racing and online gaming. Whether such high taxation would impact the existence of these industries? There were divergent views on this aspect, as discussed later in the report.

11.2 Financial Implications if net value is adopted:

11.2.1 In pre-GST regime, tax incidence on betting and gambling in race courses and casinos was higher. Entertainment tax was levied on the entry to race courses at the weighted average of 29% approx. and 15% service tax was levied on the service by way of allowing access to the race course. In addition to this, 15% service tax was levied on tote commission and license fee, and there were various other embedded duties and taxes in the form of State VAT, Central excise duty, service tax etc. on inputs and input services, credit of which was not available. Rate of Betting Tax alone was in the range of 8 - 26.25 % and it was levied on face value of bet by States such as West Bengal and Maharashtra.

Table 4: Rate of Betting Tax levied in pre-GST regime in India

Clubs	State	Rate of Betting tax
Royal Western India Turf Club	Maharashtra	20%
Delhi Race Club	New Delhi	20%
Madras Race Club	Tamil Nadu	26.25%
Royal Calcutta Turf Club	West Bengal	10%
Hyderabad Turf Club	Telengana	15%
Bangalore Turf Club	Karnataka	8%

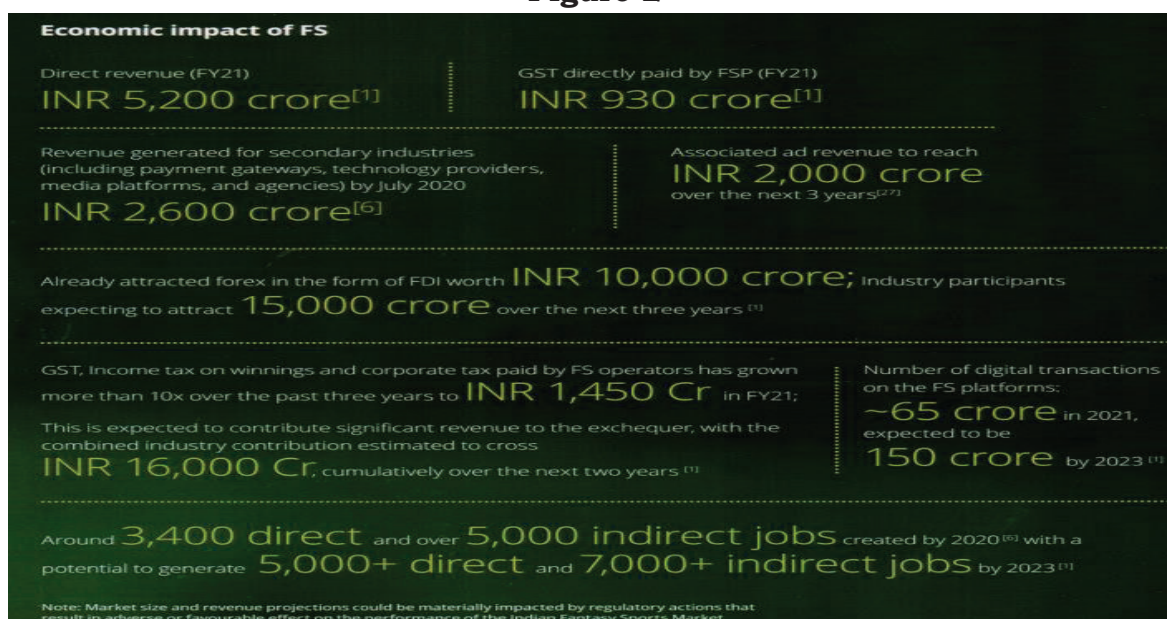
11.2.2 Similarly, in the case of casinos, multiple taxes were levied. Illustratively, entry tax of Rs 1000 per person; 15% surcharge on entry tax; 15% tax on sale of chips/coins; VAT on food and beverages; 15% service tax on commission, wherever applicable; 15% service tax on license fee were charged and there were other embedded taxes in the form of excise duty, service tax, VAT etc. on input goods and services, credit of which was not available.

11.2.3 With the introduction of GST, a simple tax regime has been introduced, subsuming most of the taxes levied by the States. The rates of GST are prescribed on the recommendations of the GST Council.

11.2.4 The online gaming sector is growing at a fast pace and has high revenue potential. Considering its huge market share and prominent revenue projections, it has larger financial implications. Details as provided by Federation of Indian Fantasy Sports (FIFS) are depicted as follows:

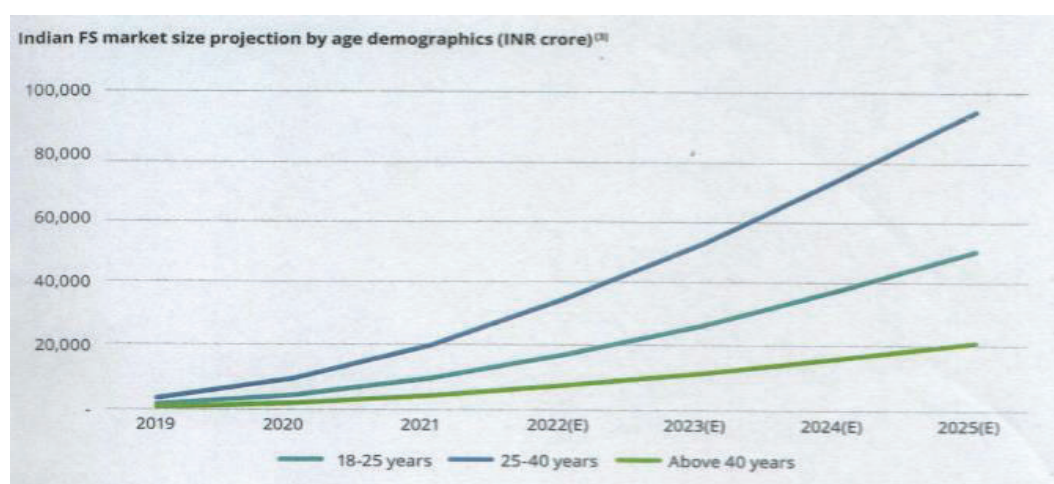
Figure 1

Source: Federation of Indian Fantasy Sports (FIFS)

Figure 2

Source: Federation of Indian Fantasy Sports (FIFS)

11.2.5 As estimated by FIFS, India's cost of internet data is 15% of the world's average. [Rs 51/GB in India vs Global average of Rs 316/GB as reported by Fantasy Sports Association]. Thus, a huge competitive advantage exists for Online Gaming in India on this parameter. In addition, there is a huge base to be tapped that provides enormous potential to grow. The significant influence on the younger population is shown by the following graph:

Figure 3

Source: Federation of Indian Fantasy Sports (FIFS)

11.2.6 Revenue indication of GST on face value and on net value is illustrated below.

Illustration: GST @ 28%: on face value Vs on GGR

- On procurement of chip/coupon, bet amount of Rs 1000 (if inclusive of GST), the GST liability would be Rs 218.75. The play amount would be Rs 781.25. Similarly, online gaming ticket of average price of Rs 30 will have GST of Rs 6.5 and play amount of Rs 23.5. Thus, tax incidence is exactly same as on lottery or on an actual game of IPL/sports league or any other items at 28%.
- Whereas, if GST @ 28% is levied on GGR, [industry estimate of 4% to 20% of face value] in online gaming then on an average, the GST on online gaming ticket of Rs 30 @ 28% of GGR would be Rs 0.8. In case of casinos, as reported, the casino edge may be lower to the extent of 1.8% to 4% approx.
- Thus, financial implications of subjecting GST on GGR, (as per industry estimates) are substantial. Taxation of online gaming or casino at GGR creates huge distortion in terms of tax differential between lottery (face value taxation) and these activities.
- Besides having implications for lottery, a similarly placed activity, this will also have implication for revenue, in terms of calculations as illustrated above.

11.3 Possibility of determination of net value:

11.3.1 It was stated by the members that there is a need to formalise the activity of betting/gambling and bring it out of the grey market. This could be possible by incentivising the players by providing a rebate of GST after it has been collected.

11.3.2 In this context, the GoM also considered other potential methodologies as were recommended, if net value is to be determined, with the view that proposed methodology should be such that it bridges the seemingly irreconcilable conflicts between maintaining consistency with the Hon'ble Supreme Court's ruling on Lotteries; holding firm to the principle of not making Chance/Skill distinctions while keeping GST Revenues buoyant, and giving the gaming industry relief by taxing only GGR, thereby improving the attractiveness of formal channels of betting and enabling growth in volumes. The proposed methodology included abating GST to a player on winnings when such wins were below a certain limit, while ensuring that the

amount of GST abated is not more than what was paid by a player in the first instance while paying GST on face value.

11.3.3 The essential idea behind this proposition is that since EVERY bettor places their bets with the expectation of winning, such a design will remove the reluctance to place wagers or play games through formal channels (relative to informal ones). Proposal of determining GGR on the basis of net sale, purchase and holding of chips in casino was also considered by the GoM i.e., net amount of total chips issued during the trading day minus chips encashed, minus chips holding).

11.3.4 After detailed deliberation, it was felt that GGR is a complex concept, and envisioned methodology though for improvement over GGR, may add to complexities in the tax administration. It was reiterated that the recommendations regarding valuation would be made in conformity with the statutory & legal framework and the judgment of the Hon'ble Supreme Court since it is the law of the land.

11.4 Implication of GST on full value: Discussion regarding implication of imposition of GST on the full face value for the Industry, i.e., casino, horse racing and online gaming and the concluding view of the GoM on valuation aspect is as follows:

11.4.1 It was generally felt that decision on valuation of these activities should be such that it achieves a balance between the competing interests of all the three main stakeholders involved, namely the society at large, the Government (Revenue) and the Trade. Though the activities in casino, race courses and online gaming appear to be diverse, their essential nature is the same and the issue of valuation is fundamental to the entire matter.

11.4.2 It was argued that taxation should not be such that it impacts the very existence of the Industry. There were two views on this aspect. One, as made by Hon'ble Finance Minister from Goa that their main concern in taxing the casinos on full value was that of decrease in the footfall in tourism and viability of the casino industry. He stated that at present, Goa is booming with activities, flights are full and tourists are flocking to Goa owing to casinos in the State. Consequently, substantial economic activity is being created for artisans and suppliers of other goods and services in travel and tourism, hotel accommodation, entertainment etc. His apprehension was that any excessive taxation on casino would impact the tourism adversely. He also mentioned that the practice followed in India deviates from the global practice of taxing on GGR. He further stated that comparing betting and gambling with Ola and Uber is like comparing oranges and apples. Including the prize money in

taxable value may lead to further litigation. He stated that ultimately, revenue should increase and these activities should be discouraged, but at the same time, the industry should also survive. If the industry closes down, there will be no revenue. Therefore, a good policy of taxing casinos based on GGR or net value should be evolved.

11.4.3 The competing views were that similar narrative was created by the industry, when the issue of taxation of lottery was decided. However, lottery industry has been doing very well even after imposition of GST at the rate of 28% on the face value. 28% tax is reasonable on such activities. Even in pre-GST regime, there was overall high taxation on all these activities, if all taxes are considered. Global regime also suggests that these industries survive even with higher taxation. It was also felt that these are not essential services. Anyone visiting a casino or horse racing for entertainment can afford a GST levy of 28%. Normally a person goes there for enjoyment and not for making a living out of this earning. So, quantum of winning may not even be significant criterion for a visitor to visit casino or horse racing. 28% levy may not impact the sentiments adversely. It was further argued that once a view is taken to have a uniform taxation regime for all these activities, including lottery, the tax should apply on actionable claim in each of these activities. In case, it is decided to tax casinos, horse racing and online gaming on GGR or net value, new cases will be filed by the lottery organisers. Differential treatment for casinos will impact the already settled matter of lottery. Many states earning substantial revenues from lottery will be impacted. Pre-GST regime also was having significant taxes and in most instances of horse racing and casino, these taxes were on the face value. In such circumstances, there may not be much merit for adopting GGR- based taxation only for casino.

11.4.4 In case of casinos, the issue was further debated on, while the GoM could easily reach consensus on horse racing and online gaming.

11.4.5 In horse racing, the GoM overwhelmingly reached the conclusion that the GST be levied on face value of the bet at 28%. The States in which horse racing is prevalent observed that in Pre-GST regime, state taxes were levied on face value. In addition, there were certain other taxes like service tax; hence considering the nature of activity, there is no reason for imposition of tax on GGR. Thus, it was agreed to by all members to tax horse racing on full bet value. The GoM, accordingly, finalised its view on valuation of horse racing.

11.4.6 On online gaming too, after examination of all the above aspects and based on the above deliberations, the GoM concluded that in view of the nature of this activity, there does not appear to be a reason for not taxing it on full bet value. The industry is growing at a phenomenal pace. 28% rate on face value is reasonable. Lottery is already bearing such tax and has only been

growing. There is no reason to assume that existence of the industry would be threatened by such a reasonable levy. The tax would be borne by the player and not by the online gaming site. Any lower tax on such activity with negative externality will send a wrong message. Taking into account all these aspects, and also financial, legal and other implications, as detailed above, the GOM unanimously agreed that online gaming should be subjected to GST at the rate of 28% on the full value of the amount paid. The GoM finalised its view with consensus to tax online gaming at the rate of 28% on the full value.

11.4.6.1 During discussion, it was also felt by the members, that in case the law requires any change, the same may also be carried out, including insertion of an Explanation to Entry 6 of Schedule III to the CGST Act, 2017, so as to explicitly clarify that all these activities are taxed uniformly.

11.4.7 On casinos, the Hon'ble Minister from Goa reiterated that this issue is specific to his state and Sikkim. In future, few more States may have casinos. However, as he had mentioned earlier, this issue has wider implications. Therefore, the GoM may like to consider it in further detail, considering the apprehension that it may impact Goa's economic activity. The other Members of the GoM explained their views in detail, many of them reiterating that by very nature, such supplies should be taxed at 28% on the value of chips. While the GoM was of the view that what happens inside the Casino, i.e., each bet or playing of game in casino with winnings etc. should not be taxed, as customer only pays consideration at the time of buying of chips, to say that GST be abated on chips returned to casino after playing for whole day may not be a fair preposition, as the entire activity of going inside the casino, playing, getting entertained, winning or losing, is what constitutes the whole supply. It cannot be argued that a player going inside with 10 chips, playing for whole day with those chips and returning at the end of the day all 10 or more chips did not receive any supply from the casino. Refund of GST on such return of chips would mean that despite playing in casino for whole day, and also getting entertained in the process, there was no value associated with the supply made to him by the casino. It was felt that if lottery, online gaming and horse racing attract GST on the face value, then same treatment needs to be given to the Casinos. If casinos are uniformly taxed across the country, Goa does not get any disadvantage vis-a-vis other states. It was also reiterated that a person going to Casino could afford this tax, which is reasonable and not many people go there with the sole objective of winning. Lottery has survived and thrived with 28% tax on face value regime, so should other activities of similar nature. As such, intention in law is also to tax such supplies. Once, it is decided that each bet inside the casino is not taxed, this will provide a relief and taxing purchase of chips at face value is reasonable tax as borne by other activities and many other supplies as well. The Hon'ble Minister, Goa, in view of overall broader agreement in the GoM, agreed with

some reluctance to this decision, in the larger interest of making a consensus on the issue, stating that he would like to go with the spirit of taking decisions by consensus and of settling the issue after such detailed discussions and deliberations.

11.4.8 Accordingly, a consensus emerged that betting and gambling in casinos may continue to be taxed at the full value of bets placed and not on GGR/net value. GST should be levied on the value of chips/coins purchased from the casino. The bets or wagers placed in subsequent rounds of betting with the chips or tokens won in the previous rounds shall not form part of the taxable value of betting and gambling in the casinos. It was felt that this would be an appropriate approach which will be in conformity with law and legislative intent and at the same time will not make the casino industry unviable.

12. Recommendations:

- I. Imposition of GST on these activities namely, casinos, race courses, online gaming and lottery should be uniform (in terms of rate and valuation).
- II. For the purpose of levy of GST, no distinction should be made in these activities merely on the ground that an activity is a game of skill or of chance or both.
- III. **Rate of GST:** GST may be levied at the rate of 28% on all activities namely Casinos, Race Courses and Online Gaming.
- IV. **Valuation:**
 - a) In case of online gaming, the activities be taxed at 28% on the full value of the consideration, by whatever name such consideration may be called including contest entry fee, paid by the player for participation in such games without making a distinction such as games of skill or chance etc.
 - b) In case of Race Courses, GST continue to be levied at the rate of 28% on the full value of bets pooled in the totalisator and placed with the bookmakers.
 - c) In case of Casinos, GST be applied at the rate of 28% on full face value of the chips/coins purchased from casino by a player.
 - d) In case of casinos, once GST is levied on purchase of chips/coins (on face value), no further GST to apply on the

value of bets placed in each round of betting including those played with winnings of previous rounds.

- V. **Entry fee to casinos:** GST at the rate of 28 % is leviable on the services by way of access/entry to Casinos on payment of consideration/entry fee which compulsorily includes price of one or more other supplies such as food, beverages etc.; this being a mixed supply. However, optional supplies made independently of the entry ticket shall be taxed at the rates as applicable on such supplies.

13. Annexures:

**Annexure A: Office Memorandum dated 24.05.2021 regarding
initial constitution of GoM and its Terms of Reference**

S-31011/12/2021-DIR(NC)-DOR
Government of India
Ministry of Finance
Department of Revenue

New Delhi, dated 24th May, 2021

OFFICE MEMORANDUM

Subject: Constitution of Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming - reg.

In pursuance of the decision of the GST Council a Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming has been constituted. The GoM shall consist of the following members:

Sl. No.	Name	Designation and State	
1.	Sh. Nitin Patel	Deputy Chief Minister, Gujarat	Convener
2.	Sh. Ajit Pawar	Deputy Chief Minister, Maharashtra	Member
3.	Sh. Chowna Mein	Deputy Chief Minister, Arunachal Pradesh	Member
4.	Sh. Mauvin Godinho	Minister for Transport, Goa	Member
5.	Sh. Basavaraj Bommai	Minister for Home Affairs, Karnataka	Member
6.	Sh. P Thiagarajan	Minister for Finance, Tamil Nadu	Member
7.	Dr. Amit Mitra	Minister for Finance, West Bengal	Member

2. The terms of reference (ToR) for the GoM on Casinos, Race Courses and Online Gaming shall be as follows:

- a. To examine the issue of valuation of services provided by Casinos, Race Courses and online gaming portals and taxability of certain transactions in a casino, with reference to the current legal provisions and orders of Courts on related matters.
- b. To examine whether any change is required in the legal provisions to adopt any better means of valuation of these services.
- c. To examine the administration of such valuation provision if an alternative means of valuation is recommended.
- d. To examine impact on other similarly placed services like lottery.

3. The GoM on Casinos, Race Course and Online Gaming shall be assisted by a Committee of officers from Centre and States as convened by the GoM.
4. The secretarial assistance to this GoM will be provided by Joint Secretary (TRU-II) CBIC.
5. The GoM shall submit its recommendation to the Council within six month for consideration of the GST Council.


 (Dinesh Khosla)
 Director
 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. Joint Secretary TRU-II, Department of Revenue, North Block, New Delhi
5. GST Council Secretariat, New Delhi
6. PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi
7. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi.

**Annexure B: Office Memorandum dated 10.02.2021 regarding
re-constitution of GoM**

S-31011/12/2021-DIR(NC)-DOR
Government of India
Ministry of Finance
Department of Revenue

New Delhi, dated 10th February, 2022

OFFICE MEMORANDUM

Subject: Constitution of Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming - reg.

In partial modification to the OM of even number dated 24.05.2021 & 11.06.2021 on the subject cited above, it is stated that reconstituted membership of the GoM is as follows: -

S. No.	Name	Designation and State	
1.	Shri Conrad Sangma	Chief Minister, Meghalaya	Convener
2.	Shri Ajit Pawar	Deputy Chief Minister, Maharashtra	Member
3.	Smt. Chandrima Bhattacharya	Minister for Finance, West Bengal	Member
4.	Shri Kanubhai Desai	Minister for Finance, Gujarat	Member
5.	Shri Mauvin Godinho	Minister for Panchayat Raj, Transport, Animal Husbandry & Veterinary Services, Protocol & Legislative Affairs, Goa	Member
6.	Dr. Palanivel Thiaga Rajan	Minister for Finance, Tamil Nadu	Member
7.	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs and Medical Education Departments, Uttar Pradesh	Member
8.	Shri Thanneeru Harish Rao	Minister for Finance, Telangana	Member

2. The other terms of reference (ToR) for the GoM on Casinos, Race Courses and Online Gaming shall remain unchanged.

3. This issues with the approval of competent authority.


(Dr. N Gandhi Kumar)
(Director)
Tel. 011-23092613

To,

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



Agenda for

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Discussion on Agenda Items

Agenda Item No. 3 (xx)

Subject: Consent based data sharing for non GST purposes.

1. With the introduction of GST, as a deliberate policy direction, the GST Council ensured that the interface between taxpayers and the tax administration is in electronic form through a common portal. This has ensured complete transparency and ease of compliance. At the same time, it has also made available valuable data that can be used for other purposes for the benefit of taxpayers.

2. One such use case is using the return filing and related data like statement of outward supplies, e-invoice, e-way bill etc. for making credit available to the business entities, especially the micro, small and medium enterprises. Various initiatives including flow based lending based on the invoices issued by the suppliers are in works, like Trade Receivables Discounting System (TReDS) under the Factoring Regulation Act. Currently, TReDS accesses invoices through a complex process. With access to invoice based data, the business flow can be radically simplified for the taxpayers. Similar other initiatives like sharing data through the system of Account Aggregators brought in place by Reserve Bank of India for consent based sharing of financial data are in pipeline.

3. It is proposed to amend the GST Acts to allow sharing of supply data with the consent of the supplier and the recipient with these systems. This matter was discussed in Law Committee and the committee suggested that the *“Amendment to be done in CGST/SGST Act to this effect which will incorporate due safeguards for indemnity and non-liability of GSTN/GST authorities (without prejudice to any action under GST law). The proposed amendment to ensure the provision for non-disclosure clause.”*

4. Accordingly, it is proposed to insert a following new section 158A in the GST Acts to allow sharing. The exact mode of obtaining consent and sharing of data will be outlined in rules.

158A. Consent based sharing of information furnished by the taxable person.—

(1) Notwithstanding anything contained in sections 133, 152 and 158,

(a) the details furnished in the return under section 39 or under section 44 or in application of registration under section 25;

(b) the details of outward supplies furnished under section 37, particulars uploaded on the common portal for generation of Invoice Reference number for preparation of invoice and for generation of documents under section 68; and

(c) such other details as may be prescribed,

by a registered person can be shared by the common portal, subject to the provisions of sub-section (2), with such systems as may be notified by the Government on the recommendations of the Council, in such manner and subject to such conditions as may be prescribed.

(2) The details and particulars referred to in sub-section (1) shall be shared after obtaining the consent, in such form and manner as may be prescribed, of the supplier, and of the recipient in cases pertaining to clause (b) and such cases pertaining to clause (c) of sub-section (1) where information shared includes identity information of the recipient.

(3) Notwithstanding anything contained in any law in force, no action shall lie against Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

5. Approval of Council is sought to carry out the proposed amendments in the respective GST Laws and also, in the meantime, consent based data sharing module may be implemented with appropriate safeguards provisioned through amendments in the GST enactments.