Confidential

सत्यमेव जयते

Agenda for

50th GST Council Meeting

11th July 2023

Volume-I

माल और सेवा कर परिषद
GOODS AND SERVICES TAX COUNCIL

GST Council Secretariat New Delhi

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
14th June, 2023

OFFICE MEMORANDUM

Subject: Notice for the 50th Meeting of the GST Council scheduled to be convened on 11th July, 2023.

The undersigned is directed to refer to the subject stated above and to convey that the 50th Meeting of the GST Council will be held on 11th July, 2023 at New Delhi. The schedule of the Meeting is as follows:

- **Tuesday, 11th July, 2023:** 11:00 A.M. onwards

2. In addition, an Officers' Meeting will be held on 10th July, 2023 as per the following schedule:

- **Monday, 10th July, 2023:** 2: 00 P.M. onwards

3. The agenda items and other details for the 50th Meeting of the GST Council will be communicated in due course of time.

4. Keeping in view the logistical constraints, it is requested that participation from each State/UT may be kept limited to two (02) officers in addition to the Hon'ble Member of the GST Council.

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

Sd/-
(Sanjay Malhotra)
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.

TABLE OF CONTENTS

Discussion on Agenda Items

Agenda Item 1: Confirmation of Minutes of the 49th Meeting of GST Council held on 18th February, 2023

The 49th meeting of the GST Council was held on 18th February, 2023 under the Chairpersonship of the Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman at Vigyan Bhawan, New Delhi. The list of Hon'ble Members of the Council who attended the meeting is at **Annexure-1.** The list of the officers of the Centre, States, Union Territories with legislature, GST Council Secretariat and GSTN who attended the meeting is at **Annexure-2.**

1.2 The following agenda items were listed for discussion in the 49th meeting of the GST Council:

Agenda No.	Agenda Item
1	Confirmation of Minutes of the 48th meeting of the GST Council held on 17th December, 2022 and Errata
2	Report of Group of Ministers on constitution of the Goods and Services Tax Tribunal
3	Ratification of the Notifications, Circulars and Orders issued by the GST Council
4	Issues recommended by the Law Committee for consideration of the GST Council
	i Amendment in Section 23 of the CGST Act, 2017
	ii Proposal to extend time period mentioned in Section 62(2) of the CGST Act, 2017
	iii Change in Place of Supply of transportation of goods under Section 13(9) of the IGST Act, 2017
	iv Rationalisation of late fee for FORM GSTR-9 and amnesty for non-filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10
	v Amendment in CGST Rules and Notification for biometric based Aadhaar authentication of registration applicants
	vi Extension of time limit for application for revocation of cancellation of registration
	vii. Extension of time limit under sub-section (10) of section 73 of the CGST Act for FY 2017-18, 2018-19 and 2019-20.
	Errata
5	Recommendations of the Fitment Committee for consideration of the GST

Agenda No.	Agenda Item
	Council
	a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to goods – Annexure-I
	b) Issues where no change has been proposed by the Fitment Committee in relation to goods – Annexure-II
	c) Issues deferred by the Fitment Committee for further examination in relation to goods – Annexure-III
	d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services – Annexure-IV
6	Report of Group of Ministers on Capacity Based Taxation and Special Composition Scheme in certain sectors on GST
7	Closure of Group of Ministers on levy of Covid Cess on Pharma and Power Sector in Sikkim
8	Closure of Group of Ministers to examine the feasibility of implementation of e-way bill requirement for movement of gold and other precious stones.
9	Issues recommended by GSTN :
	1. Proposed Changes in HR Policies and Transition Management from GSTN
	2. Proposal for Changes in the Revenue Model of GSTN and transition to the new Revenue Model (as amended and circulated on 18/02/2023)
	3. Waiver of Interest on delayed receipt of Advance User Charges from a few States and CBIC
	4. Data Archival Policy for the GST System
	5. Implementation of facility to Generate Document Identification Number in GST Back Office for Model 2 States in compliance with the Supreme Court judgement in W.P. 320 of 2022.
10	Recommendations of the 17th IT Grievance Redressal Committee for approval/decision of the GST Council
11	Agenda on Report of Committee of Officers on GST Audit along with Draft Model All India GST Audit Manual (as amended and circulated on 18/02/2023)

Agenda No.	Agenda Item
12	Decisions of GST Implementation Committee for information of the GST Council
13	Ad-hoc Exemptions Orders issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information
14	Review of revenue position under Goods and Services Tax
15	Any other agenda with the permission of the Chair

1.3 The meeting started with exchange of greetings between Hon'ble Members and the Hon'ble Chairperson on the occasion of Maha Shivaratri.

1.4 With the permission of the Chair, the Secretary to the GST Council welcomed all the Hon'ble Members of the Council and participating officers to the 49th meeting of the GST Council. The Secretary on behalf of the Council welcomed the following new Hon'ble Members to their first meeting of the GST Council-

1. Sh. Subhash Garg, State Minister for Technical Education, Rajasthan
2. Sh. Harshwardhan Chauhan, Minister for Industries, Himachal Pradesh
3. Sh. Deepak Vasant Kesarkar, Minister for Education and Marathi Language, Maharashtra

1.5 The Secretary stated that the Hon'ble Members of the Council were aware that in its 47th meeting at Chandigarh, the Council had formed a Group of Ministers (GoM) on Goods and Services Tax Appellate Tribunal with Sh. Dushyant Chautala, Hon'ble Deputy Chief Minister of Haryana as the Convener and Hon'ble Ministers from the States of Andhra Pradesh, Goa, Rajasthan, Uttar Pradesh and Odisha as Members. The GoM had submitted their recommendations in the form of a report which was being placed as an agenda before the Council. He thanked all the Hon'ble Members of this GoM for their valuable recommendations.

1.6 Further, he stated that the GST Council had formed another GoM on Capacity Based Taxation and Special Composition Scheme in Certain Sectors on GST with Sh. Niranjan Pujari, Minister of Finance, Odisha as the Convener and Hon'ble Ministers from Delhi, Haryana, Kerala, Madhya Pradesh, Uttar Pradesh and Uttarakhand as Members. The GoM had submitted its report which was being placed before the Council for deliberations. He thanked all the Hon'ble Members of the GoM for their valuable recommendations.

1.7 He further stated that a GoM on Casinos, Race Courses and Online Gaming was formed to examine the issue of valuation of said services and related aspects with Sh. Conrad Sangma, Hon'ble Chief Minister, Meghalaya as Convener and Hon'ble Ministers from Maharashtra, West Bengal,

Gujarat, Goa, Tamil Nadu, Uttar Pradesh and Telangana as Members. He stated that though the GoM had submitted its report, however due to unavailability of the Hon'ble CM, Meghalaya, tabling of this report was being deferred.

1.8 He further stated that in this Council meeting, there were agendas for closure of GoM on movement of Gold and Precious Stones and GoM on Levy of Covid Cess on Power and Pharma Sector in Sikkim. He thanked all the Hon'ble Members of these two GoMs for their valuable contributions.

1.9 The Secretary further briefed the Council regarding the status of revenue collection and improvement in compliance behaviour. He informed that the GST collection in January, 2023 stood at ₹ 1,57,554 crore which is the second highest ever next only to the collection reported in April, 2022. This was for the third time in the current financial year that the GST collection has crossed ₹ 1.50 lakh crore mark. He stated that the revenues in the current financial year up to the month of January, 2023 were 24% higher than the GST revenues during the same period last year. He further informed that 8.3 crore e-way bills were generated during the month of December, 2022 which was the highest so far and it was significantly higher than 7.9 crore e-way bills generated in November, 2022. He stated that 2.42 crore GST returns were filed in the quarter Oct-Dec 2022 as compared to 2.19 crore GST returns in the same quarter in the last year. The Secretary thanked all the States for their remarkable efforts for improvement in compliance behaviour and revenue augmentation.

1.10 The Secretary further informed the Council that he had met the officers of the Centre, States and UTs on 17.02.2023 and had a very detailed and fruitful discussion on various agenda items which would aid the Council in steering the agenda. He sought permission of the Hon'ble Chairperson to start the proceedings of the meeting. The Hon'ble Chairperson accorded permission to start with the agenda. The Hon'ble Chairperson informed the Council that the dues of compensation cess in all the cases where the AG's certificate had been provided by the State would be cleared that day. She highlighted that the Centre had released more compensation than the cess received. She stated that the Centre is proposing to pay the compensation dues in advance without waiting for the collection of the cess. She requested all the States to send the pending AG's certificates to enable the Centre to disburse the compensation amount timely.

1.11 The Secretary stated that there were fifteen agenda items in this meeting and the major set of agenda was circulated well in advance as promised in the last GST Council meeting.

Agenda Item 1: Confirmation of the Minutes of the 48th Meeting of the GST Council

2.1 The first agenda item pertained to confirmation of the minutes of the 48th Meeting of the GST Council held on 17th December, 2022 through Video Conferencing. The Secretary stated that few States had suggested editorial changes which had been carried out and the revised minutes had been incorporated in the agenda and circulated to all the Hon'ble Members. Further Punjab had suggested certain minor changes in para 4.32 in the Officers' Meeting on 17th February 2023 which had been circulated to the Hon'ble Members in this meeting. The minutes of the 48th meeting of the GST Council after incorporating the suggested changes by the States were being placed before the Council for confirmation.

Decision: The Council adopted the Minutes of the 48th meeting of the GST Council.

Agenda Item 2 : Report of Group of Ministers on constitution of Goods and Services Tax Tribunal

3.1 The Secretary requested the Hon'ble Deputy CM of Haryana (Convener of GoM) to present the Report of GoM on constitution of GSTAT.

3.2 The Hon'ble Member from Haryana thanked the Hon'ble Chairperson and made a presentation **(Annexure-3)**. He informed the Council that consequent to discussions in the 47th Meeting of the GST Council held in Chandigarh, a GoM on GSTAT was constituted. The mandate of the GoM was to recommend necessary amendments to GST law to ensure that the legal provisions maintained the right federal balance and were in line with the overall objective of uniform taxation as well as the principles outlined in various judgments of Courts in relation to constitution of Tribunals.

3.3 The Hon'ble Convener of GoM informed the Council that the GoM had held two meetings. In the first meeting held at New Delhi, the GoM discussed the various judgments of Supreme Court as to how Tribunals needed to be constituted and the criteria for selection of Technical Member(s) and Judicial Member(s) and other provisions. The second meeting of the GoM was held in Bhubaneshwar where the recommendations were finalised. The Hon'ble Convener further explained that two Members of the GoM had differed with the recommendation of the GoM on the point of opting for a National Tribunal with Benches in States but there was agreement amongst Members on the remaining recommendations. He further stated that keeping in view the spirit of co-operative federalism, the GoM recommended One Nation, One Tax and One Tribunal. He also informed that detailed discussions were held for determining the methodology for creation of Benches, selection of Technical/Judicial Members keeping in view the rights of Member States as well as the interests of the tax payers. After careful consideration of all these aspects, the GoM recommended that there should be one Tribunal constituted at National level with Benches of that Tribunal at State level having regard to both population and tax payer base of that State.

3.4 The Hon'ble Convener of GoM further informed the Council that Members from U.P and Rajasthan had suggested that there should be State Tribunals but the majority of the Members of GoM agreed with the proposal that there should be one National Tribunal with Benches at State level. In this regard, he also informed the Council that the GoM had also considered the issue of various State Advance Ruling Authorities giving varied decisions on the same issue. To elaborate the point, the Hon'ble Convener cited the example of issue involving whether input tax credit (ITC) needs to be allowed on a demo car used by car dealers and in the States of Haryana and Madhya Pradesh, the respective Advance Ruling Authorities had passed orders that input tax paid on a demo car is not an eligible credit but in the State of Kerala and Maharashtra, the AAR had passed an order that ITC can be allowed for demo car. This demonstrates that there could be conflicting views on same issue across States as no single judgement prevailed over the whole country. To address this issue, the GoM had recommended that National Tribunal should be created with Benches at States so that there will be persuasive value of orders/judgements passed by respective Benches in other States. He submitted that this would be keeping in line having uniformity and One Nation, One Tax and One Tribunal as

National Tribunal would be able to give a ruling on such aspects.

3.5 The Hon'ble Convener of GoM further submitted that in 2020, the Hon'ble Supreme Court on a petition made by the Madras Bar Association had directed that the Search cum Selection Committee (**ScSC**) be chaired by the Chief Justice of India or a Judge of Supreme Court nominated by him with the President of the Tribunal and 02 Officers as Members. On the question of having a different ScSC for the States, the Hon'ble Convener stated that on the question of selection of Technical Member at National/State level, even during the 47th GST Council Meeting, it was submitted that since all members are equal in roles and responsibilities, they should go through the same selection and appointment process. He further submitted that GoM had proposed that the ScSC for selection of Judicial Member and Technical Member (Centre) of National Tribunal could consist of Chief Justice of India or a Judge of Supreme Court nominated by him as Chairperson of ScSC, President of the Tribunal, Secretary of Central Government along with Chief Secretary of a State to be nominated by the Council. The Hon'ble Convener of the GoM further pointed out that the GoM had recommended that the Chief Secretary of the State in which the Bench is located should be made part of the ScSC in case of member for selection of Technical Member (State).

3.6 With respect to composition of Benches, the GoM had recommended that it should consist of one Judicial Member and one Technical Member. Further, the Technical Member should be Technical Member (Centre) or Technical Member (State) in a 50:50 ratio in every State. In case of smaller States, where only one Bench would be constituted, there should be provision for alternating the tenure between Technical Member (Centre) and Technical Member (State) for a specific time. The GoM further suggested that single Member Bench should be empowered to hear cases with tax implications up to Rs. 50 lakhs, where no question of law was involved. However, the power to raise the monetary limit was left to the decision of the Council.

3.7 The Hon'ble Convener stated that with respect to qualifications of Members, the GoM suggested that the President be a Judge of the Supreme Court (retd.) or Chief Justice of the High Court (retd.). With respect to qualification of Judicial Member, the GoM recommended that he should be a Judge of the High Court (retd.) or District Judge or Additional District Judge with at least 10 years' experience. With respect to qualification of Technical Member (Centre), the GoM recommended that he should be a member of the Group A Service with 25 years of service (IRS - C&IT) or All India Services (AIS) with at least 3-year experience in GST or existing law and 25 years of service. With respect to qualification of Technical Member (State), the GoM recommended that he should have minimum 25 years' service and should be officer of State Government or AIS with a rank higher than the First Appellate Authority of the State. To give an example, the Hon'ble Convener stated that in the State of Haryana it would be an officer at least of the rank of Joint Excise & Tax Commissioner or Additional Excise & Tax Commissioner. Further, he submitted that in many States the equivalent of this is a Class B officer and in such cases the Council has the power to consider the request of the State and amend the requirement from time to time. Also, the requirement of 25 years of Government service in Group A may be reduced on the recommendation of the Council.

3.8 Regarding the retirement age of Members, the GoM recommended that the retirement age of President should be 67 years and 65 years for the members. This was kept keeping in view that the retirement age of High Court judge is 62 years. Therefore, the GoM felt that if they applied for

Member (Judicial) of Tribunal after 62 years, they would get a tenure of 4 years after the selection process. The Hon'ble Convener further submitted that if a High Court judge so desired, he could take early retirement and apply for the post but in such cases, they should not be given an extension for more than 2 years in the second tenure.

3.9 Regarding the number of Benches to be constituted, the Hon'ble Convener submitted that they had taken into consideration the representation of UP, Tamil Nadu and all other States that had written to the GoM. The GoM after detailed discussion had recommended that States with less than 5 crore population should not have more than two Benches. The Hon'ble Convener further stated that GoM wanted to similarly limit the number of Benches according to 10 crore/15 crore population for bigger States but taking into consideration the demands of all States, the GoM had recommended that any State with population above 5 crore should not have more than 5 Benches.

3.10 The Hon'ble Convener further informed the Council that few States had represented that they did not have a notified/recognized Group 'A' Service and that in such cases the GoM had recommended that Class I officer with a different nomenclature could be accepted as Technical Member (State) subject to approval given by the Council from time to time on request made by the State.

3.11 The Hon'ble Convener of GoM concluded the agenda by stating that acceptance of the proposal for constitution of GSTAT would be for the betterment of taxation matter in States as it would address the large pendency of appeals.

3.12 The Secretary thanked the Hon'ble Convener of GoM and invited comments from all the Hon'ble Members.

3.13 The Hon'ble Member from UP stated that as a Member of the GoM he had agreed with all recommendations except one. He stated that States should have the power to constitute the State Tribunal. In this regard, he drew the attention of the Council to the Union List/ State List wherein Centre and State have been vested with the power respectively to make laws on subjects mentioned therein. Further, he stated that Article 246 A specifically provides the legislature of every State with power to make laws with respect to Goods and Services tax imposed by Union or State subject to Article 246 (2). He also drew attention of the Council to the overriding power given in Article 323 B clause (4) which provides that the provisions of this Article shall have effect notwithstanding anything in any other provision of this Constitution or any other law for the time being in force. He stated that the Constitution has accorded power to States to constitute Tribunals and further, he clarified that the issue raised in Revenue Bar Association case pertained to number of Judicial Members and the Court had ruled that the number of Judicial Members should not be less than the Technical Members and that this case was not a precedent for the point that the States do not have the power to constitute a Tribunal. The Hon'ble Member reiterated that States should have the power to constitute Tribunals and also that States should have a say over the appointment of Technical Members.

3.14 The Hon'ble Member from Rajasthan stated that the National Tribunal and State Tribunal should be separate and that the States should have the power to constitute the State Tribunal. He agreed with the view expressed by the Hon'ble Member from UP on the point that Revenue Bar

Association case had only ruled on the issue of number of Judicial Members and that therefore it was not an authority on other matters. He further stated that every State has its own State specific industry, State specific tax payer base and therefore, every State should have its own independent State Tribunal which will work independently from the National Tribunal, Further, in case of any conflict the matter should be referred to National Tribunal. He added that the number of Benches to be constituted should not be made dependent on the population of State but the basis for the same should be the number of tax returns filed as disputes are linked to taxation issues. He further elaborated that the same principle i.e., the number of pending cases is used for determining the number of Benches of High Courts in States. Regarding the qualification of the Technical Member, the Hon'ble Member stated that the Members of the AIS and State services get transferred within a period of 1 or 2 years and that therefore, the requirement of 3 years for AIS members needs to be relooked into as this condition may result in non-availability of eligible members or limited availability of eligible members. Therefore, it was stated that the scope of eligibility of Technical Member needs to be widened to increase the pool of available officers and that the power should be given to States to constitute the State Tribunal in the light of prevailing circumstances in the State. He reiterated that the power to constitute the State Tribunals should be given to States and that they should be allowed to function independently.

3.15 The Hon'ble Member from Maharashtra stated that there should not be a fixed criterion for deciding the number of Benches. Further, he stated that being a large State, Maharashtra will also have to make provision for Benches for regional areas. He stated that the power to decide the number of Benches should be left to the States. Regarding the composition of Benches, it was suggested that appointment of Technical Member (Centre and State) in States need to be made alternately based on robust methodology like a fixed roster system i.e. if one Bench comprised Technical Member (Centre), then the next Bench could comprise Technical Member (State) and in case of four-member Benches, one Technical Member should be from Centre and another Technical Member should be from State. He further agreed with the proposal that Technical Member should not be below the rank of Joint Commissioner as it would ensure that people with reasonable experience in taxation to apply for the post. Further, the power proposed to be given to States to notify rank higher than the First Appellate Authority would be redundant where the First Appellate Authority is of the rank of Joint Commissioner but where Additional Commissioner rank officer is not available. Therefore, it was suggested that the proposed formulation may be amended so that Joint Commissioners become eligible for this post of Technical Member as a bigger pool of officers would be available. Further, the Hon'ble Member stated that they supported the proposal for National Tribunal with Benches at State level.

3.16 The Secretary clarified that the GoM had not made any proposal with respect to the number of Benches to be included in the Act and that the number of Benches could be determined by the Council.

3.17 The Hon'ble Member from West Bengal stated that they were in complete agreement with the views expressed by Members of UP and Rajasthan on the question of constitution of State Tribunal. She stated that the National Tribunal at Centre could have Regional Benches but over and above that States should have their own Tribunal. The disputes pertaining to Place of supply, etc. can be referred to the National Tribunal. The Hon'ble Member also drew attention of the Council to the guidelines laid down in L. Chandrakumar case. Further, it was stated that in Revenue Bar Association case, the Court had not decided on the constitution of the State Tribunals and that there

is also overriding power given under Art 323B over Article 246A for constitution of such Tribunal. The Hon'ble Member stated that it was their view that to keep the federalism intact it would be better to have a National Tribunal at Centre with Regional Benches in State along with independent State tribunals.

3.18 The Hon'ble Member from Kerala stated that they also support the view taken by Hon'ble Members from UP, Rajasthan, West Bengal and Maharashtra. He further stated that they supported the proposal to have a National Tribunal but at the same time they also supported the proposal to have a State Tribunal. It was also stated that the decision regarding the number of Benches for the Tribunal should be left to the Council as the suggestion made by the GoM was only recommendatory in nature and also, that the number of Benches should be determined as per the requirement of State. It was further stated that with respect to selection of Technical Members, the power of selection should vest with the State Government. He also stressed the need to have these Tribunals set up having completed 5 years of GST implementation.

3.19 The Hon'ble Member from Bihar agreed with the views expressed by Members from State of UP, Rajasthan and West Bengal and he reiterated that States should have the power to set up State Tribunals. It was also emphasized that the number of Benches should be determined on the basis of their tax payer base and the States should have the power to determine the number of Benches. It was further mentioned that the ScSC should have a member recommended by the State where the Tribunal would be set up. He suggested that power should be given to States to appoint the Technical Member (State) and preferably also the other Members to the Benches. In addition, it was mentioned that option should be given for keeping Technical Member (Centre) along with Technical Member (State) in these Benches so that there would be assured representation for the State and there could be two Judicial Members Also, it was stated that the Council could decide on the monetary limit for adjudication of cases at the level of State Benches as well as that of the National Tribunal. Further, he also stated that the Chief Justice of the High Court of concerned State should be the Chairman of the ScSC for selection of Technical Member (State).

3.20 The Hon'ble Member from Punjab supported the view taken by Hon'ble Members from Uttar Pradesh, Bihar, West Bengal and Rajasthan and stated that the States should have independent authority while constituting their own State Tribunal and in appointment of Members thereof. He further elaborated that every State has its own specific State based industry, trade practices that are particular to that State and therefore, persons from that State would be well versed with such State specific trade nuances. He also emphasized that keeping in view the federal structure the State should be given the power to set up their own Tribunals and also to make appointment of Members thereof.

3.21 The Hon'ble Member from Delhi also supported the views put forth by other States regarding constitution of separate National and State Tribunals as provisions for the same have been provided in GST law and stated that the structure of the Tribunal must be federal as GST laws have been devised keeping in view this federal structure. A Central Tribunal is not desirable. He further stated that the issue before the Court in Revenue Bar Association was related to numbers of Members of the Tribunals and there was no bar per se regarding constitution of Central and State Tribunals. He also emphasized that the constitution of number of Benches of Tribunal in States should be left to their wisdom based on number of taxpayers, the geographical area, topography etc.

3.22 The Hon'ble Member from Madhya Pradesh raised concern over large number of appeals being filed directly before the Hon'ble High Court in absence of Tribunals and stated that 2046 appeals had been decided in the State of Madhya Pradesh by the First Appellate Authority and a second appeal was expected in all these cases. He complimented the steps taken by the GoM towards setting up the Tribunal so far and stated that the State of Madhya Pradesh was in favor of constitution of separate Tribunal for the State. The State Civil services recruitment rules are different for different States. There is no classification of Group 'A" services in Madhya Pradesh. Therefore, he suggested that the eligibility for appointment of Technical Member (State) should be clearly defined and the States should be empowered to recruit Technical Member (State).

3.23 The Hon'ble Member from Tamil Nadu thanked the Hon'ble Deputy Chief Minister from Haryana for the efforts of the GoM. He elaborated that there are 31 Commercial State laws and 31 Commercial Tax departments across various States. He further stated that the Court order should not dictate the administrative policy to the Union Government or to the GST Council, as this would be undermining the powers of the Executive. He further stated that the GST Council should exercise its authority under the Constitution which was the prerogative of elected representatives. He elaborated that if the Council were to create a particular scheme for the Tribunals then the same can be taken up before the judiciary for deciding whether the scheme is valid or not under the Constitution. He opined that the directive of the Court that the Tribunals that are to be prospectively set up should follow a set principle, appears to be completely violative of the prerogative of the elected representatives. He pointed out that there are existing VAT Tribunals with one Judicial and two Technical Members which have not been invalidated by the Courts. He mentioned that if the Council proceeded with the view of the High Court, there would be a lot of complexity about the eligibility of the Members both Technical and Judicial. He further stated that in case of National Tribunal having Benches across the States, the administrative burden on a single body would be significantly higher. He stated that the Council should go with ratio of Judicial and Technical Members just like the existing VAT Tribunals and it should not give up the idea of State Tribunals. He also added that the said judgment has not discussed anything about State Tribunal. He also emphasized that when persons who are not from the particular State are appointed as Members of Tribunals then they would not be conversant with the trade practices and usages that are peculiar to that State and in this regard, he cited the example of 'Rab' that was taken up for discussion in the last Council meeting. He further stated that the local context would be lost in the case of National Tribunals.

3.24 The Hon'ble Member from Manipur requested the Council to bring down the requirement of having 25 years of experience for being considered for appointment as Technical Member (State) as for smaller State like Manipur, the age limit to get into Group 'A' service is higher i.e. 38 years; even higher for reserved category and due to this it might not be possible for them to get suitable officers for the post of Technical Member (State) with the present criteria.

3.25 The Hon'ble Member from Puducherry stated that they supported the idea of having a National level Tribunal as the same was necessary as per the Constitution, however, he stated that it was equally important to have a State level Tribunal in every State. He further suggested that the Chief Secretary of the concerned State may be included as a member of ScSC for the appointment of Technical Member (State) of the Tribunal so that due consideration would be given for appointment of experienced officers from the State in these State Tribunals/Benches.

3.26 The Hon'ble Member from Chhattisgarh stated that the nature and spirit of the Constitution is clearly federal and decisions should be taken accordingly without impinging on its provisions. He

further stated the present judicial hierarchy is District court, High Court and Supreme Court and not having an appellate authority at State level and proceeding straight to National Tribunal does not appear proper. He stated that there must be State Tribunals and appeal against the State Tribunal in case of conflicting views should go to the National Tribunal. He further stated that since there are two Acts i.e. CGST and SGST, it is only desirable that Technical Members from both Centre and State are given representation in the Tribunals.

3.27 The Hon'ble Convener of GoM stated that while making the recommendations, all six Members of the GoM had considered the fact that tax was collected at State level on consumption basis and the biggest evaluation method for consumption is the population and not the number of taxpayers, therefore, the GoM had recommended that the number of State Benches would be decided according to the population of the State. Regarding the selection of Technical Member (State), it was accepted that in case of Technical Member (State), the Chief Secretary of the State would be a Member of the ScSC. He further stated that there was a conflict regarding whether there should be a State Tribunal or a National level Tribunal having Benches in every State. He clarified that if an appeal is decided at the Joint Commissioner level, then as per the recommendations of GoM, the appeal would go to the National Bench or Bench at State level and then it would go to the High Court and then to the Supreme Court for final judgement; that if a State Tribunal was created then there would be a five tier system and therefore the GoM had collectively recommended the creation of National Tribunal and Benches in order to have faster delivery of judgments. He further stated that on the eligibility criteria of having experience of 25 years for the Technical Member (State), the Council might take a decision regarding relaxation in age or required experience as recommended by the State of Manipur. Regarding the number of Members in Benches it was stated that the Council can make a decision to keep it at 1:1 or 2:2 but the GoM had recommended having Judicial Member and Technical Member in ratio 1:1 in every Bench after thorough discussion and if the same was to be amended, then there could be litigation at Supreme Court and therefore the ratio of 1:1 had been recommended in view of the judgement of the Hon'ble Court. He also stated that these recommendations were made keeping in view the One Nation, One Tax and One Tribunal and also to avoid situations wherein conflicting views are given by different fora as is seen in case of AAR at present.

3.28 The Secretary to the Council stated that the recommendations had been made by the GoM after having considered the judgments of both the Hon'ble High Court and the Supreme Court. He also clarified that the question of having equal number of Judicial and Technical Members had been discussed by the Supreme Court in subsequent cases and it had been decided that equal number of Judicial Members and Technical Members should be maintained in the Tribunals. He also emphasized that the provisions of CGST Act and the SGST Act are *pari materia* to each other and also the rates of taxation are same for all supplies of goods and services. Accordingly, the GoM had been constituted to arrive at a uniform view in case of GST Tribunal. He further clarified that every State should have its own Bench even though some States had asked for their own Tribunal. The critical issue before the Council was the composition of the ScSC. He further stated that the Members of the Tribunal were expected to deliver judgements fairly, independently and in a nonpartisan manner and as regards the ratio of 1:1 from Centre and State in a State Bench, the same had been recommended for getting adequate representatives from both Centre as well as State services. He further stated that the existing law under CGST Act that has been struck down by the High Court, provides for one Tribunal. The CGST Act provided for National Tribunal with Regional Benches and State Benches with Area Benches but it envisages only one Tribunal. This was decided

six years ago at the time of inception of GST and this may not be revisited. Further, the major issue was regarding who makes the recommendations for the Technical Member (State). Regarding the number of Benches, he stated that the same can be varied by the Council as per the requirement of the State. Regarding the request for reduction of 3 years tenure for AIS officers for the eligibility criteria, he stated that it was a fair tenure stipulation and that without that much tenure the officer would not have sufficient experience to adjudicate on tax disputes. The Secretary clarified that Section 109 (5) of the CGST Act, as recommended by the GoM, states that 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. He clarified that therefore, the flexibility to increase the number of Benches has already been provided for in the proposed amendment to the Section.

3.29 The Hon'ble Chairperson stated that the insistence of the States on their right to nominate a person familiar with the States situation in the Benches was a fair point. In this regard, clarification was also sought from the Hon'ble Convener of the GoM regarding the appointment of Technical Member on a rotation basis i.e. in one year, the State Member would be appointed and in the next, the Centre Member would be appointed. Regarding the number of Benches, the Hon'ble Chairperson stated that there was merit in the suggestion put forward by Rajasthan and UP that it would be right for the States to suggest the numbers of Benches in State depending on the criteria of number of cases, geographical area, topographical uniqueness, etc.

3.30 The Hon'ble Convener of the GoM responded that in case of States with two Benches, one of the Benches can be constituted with Technical Member (Centre) and the other Bench can have Technical Member (State). Further, he stated that GoM had recommended that there should be rotation of Technical Member (Centre) and Technical Member (State) between these two Benches. Further, he stated that in case of bigger states like UP with five Benches, their proposal was that initially three Benches would have Technical Member (Centre) and two Benches would have Technical Member (State) and during the second tenure, this arrangement would be reversed. He further stated that they had held detailed discussion with State of UP in this regard and that the limit regarding the number of Benches suggested by them in this regard was only recommendatory in nature. Maharashtra had stated that they had eight VAT Benches and they could request for more Benches and if some States desired to collectively form one Tribunal, the same could be recommended. In this regard, the Hon'ble Convener of the GoM stated that the concerns raised by States like Rajasthan, UP, Maharashtra and Manipur would be addressed through this power vested in the Council on requests made by the States.

3.31 The Hon'ble Member from Bihar welcomed the suggestion of the Hon'ble Chairperson on the rights of State to have a say in the appointment of Technical Member and he reiterated that the Technical Member must be appointed on the recommendations of the State. The Hon'ble Member from Kerala stated that the pertinent question in this scenario was not the method of appointment of Members nor the constitution of the Benches but the right of the States to have a Tribunal of their own.

3.32 The Hon'ble Member from Rajasthan raised the issue of nomenclature of State Benches on the ground that when a National Tribunal is set up, then it would have only Regional Benches. He further stated that there was no bar on constitution of separate Tribunal for State. Further, if there are

conflicting decisions between various State Tribunals, then such conflicts could be referred to National Tribunal.

3.33 The Secretary also clarified that the number of appeals should be limited to two and that there was no need for setting a State level Tribunal as appeal in a State should be decided at two levels and thereafter the taxpayer could go to the High Court. He further pointed out that as suggested by the Hon'ble Chairperson a separate Search-cum-Selection Committee could be made for selection of Technical Member (State).

3.34 The Hon'ble Member from Chhattisgarh sought clarification as to if the ScSC can have two Judicial Members and two other Members then why should the Tribunal be precluded from having two Judicial Members and two Technical Members. The Hon'ble Convener of the GoM responded that the rights of the States are secured as provision has been made for nominating Chief Secretary of the State in ScSC for selecting the Technical member of the States in which the Bench is located.

3.35 The Hon'ble Member from West Bengal stated that issues could be divided between the National and State Tribunals; that the disputes relating to place of supply/IGST could be handled by National Tribunal and the rest of the issues could be left for the State Tribunal to decide and that there was no requirement for amending the Constitution. Further, it was stated that many Tribunals under Article 323B are already functioning in many States and there should not be any dispute regarding constituting State Tribunal in a State as National Tribunal would not be the Appellate Tribunal of the State. The Hon'ble Member clarified that State Tribunals and National Tribunals would function independently and that the appeal would lie to the High Court as power under Article 226 cannot be taken away as clarified by the Apex court in the case of L. Chandrakumar.

3.36 The Hon'ble Member from Tamil Nadu stated that there were some issues for consideration before the Council. The first issue was the constitution of the Tribunal, i.e. whether it should it be one plus one Technical Member in a revolving manner between State and Union or should it be two plus two. The GoM had recommended for one plus one arrangement but the Hon'ble Member stated that there were numerous judgements that prescribe two plus two Members. The second issue was whether there should be a State Tribunal and an appellate level National Tribunal or should there be a separation of issues between the State and National Tribunals in which case the next appeal against the judgment of the State/National Tribunal would lie to the High Court as is the case today with VAT Tribunals. Then, if the decision was not to have two separate levels within the Tribunals and to have only one level of Tribunal, then there should be no hesitation to have a State Tribunal as long as the issues are demarcated between National and State Tribunal. In such a case, there would not be any delay because every issue will get one Tribunal appearance. As regards the State Tribunals giving conflicting judgements, he opined that the same can happen in now proposed system also.

3.37 The Hon'ble Member from Rajasthan stated that the Council should go with the formulation of two plus two and he also stated that there would be no difficulty in finding two Judicial Members as the terms of qualifications provide for retired persons including District Judges. Hon'ble Member from Rajasthan suggested that the Benches in the State could be called "State Benches".

3.38 The Hon'ble Member from Andhra Pradesh stated that he was not for two plus two

formulation but to have three Members in the pool, but the quorum of the Bench would be two. This would also enable speedy resolution of cases. He further added that the GoM has recommended a National Principal Bench and State Benches with power of State for appointing the Technical Members for the reason that this would ensure uniformity of judgement across the State Benches and he also added that having State Tribunals would mean that the appeals would lie from those Tribunals to National Tribunals thereby causing further delay in deciding appeals.

3.39 The Hon'ble Member from Maharashtra also suggested to adopt two plus two formulation as this would ensure representation of both Centre and State. The Hon'ble Member from Goa stated that if the Council so decides the formulation can be changed to two plus two but there would be practical difficulties in getting Technical Members as well as Judicial Members in that case especially in smaller States.

3.40 The Hon'ble Member from Tamil Nadu proposed an alternate formulation i.e. a clear demarcation should be made on the issues that would be dealt by the National Tribunal and the State Tribunal. He further stated that the National Tribunal and its Benches would be greatly reduced in number and for them the two plus two formulation could be adopted and they could deal with issues such as Place of Supply, Country of origin, etc. He also stated that the appeal in such cases would lie to the High Court where the appellant is located. He added that State Tribunals could function with one plus one formulation and deal with issues such as assessment, GST related issues, etc. as in the case of VAT Tribunal. He further stated that these two Tribunals should function independently of each other.

3.41 The Hon'ble Member from Odisha stated as a Member of the GoM they had also suggested one plus one formulation for Benches. He further stated that in case of two plus two formulation, there could be difficulty in finding adequate number of Members. He further referred to the proposal of the Hon'ble Member from Andhra Pradesh regarding having three Members, one Judicial and two Technical Members and stated that the same was deliberated by the GoM and rejected for the reason that this would not ensure judicial priority. He further stated in case of four Members there would be disagreements between the Members which would cause delay in delivery of judgements. He also stated that the GoM had considered the request for reducing the requirement of years of experience for the Members and recommended that the qualification requirement can be reduced by the Council on a request made by a State. He added that in case of National Principal Bench with State Benches, the Principal Bench would be able to exercise control over the State Benches to ensure uniformity of decisions but supervision by Principal Bench is not possible in case of State Tribunals. The Hon'ble Member from Delhi requested the Council to decide first whether the proposal should be for a National Tribunal with State Benches or for having separate National and State Tribunal. He added that once this issue is decided upon, the Council can decide upon the number and composition of the Benches.

3.42 The Hon'ble Convener of the GoM stated that after hearing the views of all the States, a decision may be taken by the GST Council that the two plus two formulation be adopted for National level and State level Benches with National Bench being the Principal Bench. In this regard, he also stated that, if approved by the Council, the ScSC as proposed by the GoM for selection of Technical Member (State) can be amended to include the Chief Justice of the High Court, Chief Secretary of the State along with a Secretary level officer nominated by the State so as to secure the rights of the

States.

3.43 The Hon'ble Member from Tamil Nadu stated that there needs to be clarification as to whether the proposal is for a National and State Tribunal with the National Tribunal having appellate jurisdiction or whether the National and State Tribunal would be covering different set of subject matter with the appeal lying to the High Court from both these Tribunals. He suggested that the ScSC for Technical Member (Centre) should also comprise State High Court Judge, President of the Tribunal and Secretary of the Centre and Chief Secretary of the concerned State.

3.44 The Hon'ble Member from Punjab raised issue of transfer of Technical Member (State) which was also supported by Bihar and Tamil Nadu. The Hon'ble Chairperson confirmed that transfer of Technical Member (State) would be done within the State.

3.45 The Secretary clarified that there was neither an existing provision in the Act for setting up separate State Tribunals nor had it been recommended by the GoM that there would be a State Tribunal from which the appeal shall lie to the National Tribunal. He also clarified that the provisions of the Act presently provide that there will be one Tribunal with National Bench and Regional Benches to decide matters of inter-state supply and for all other matters related to taxation there will be State Benches and Area Benches within the State. Therefore, the proposal is for one Tribunal with Benches. The proposal that has been made as regards the appointment of Judicial Member and Technical Member (Centre), the ScSC would consist of Secretary from Central Government and the Chief Secretary of any State nominated by the Council. Secretary also clarified that as proposed by the Hon'ble Convener of the GoM, the ScSC for selection of Technical Member (State) can be amended to include the Chief Justice of the High Court, Chief Secretary of the State along with a Secretary level officer nominated by the State.

3.46 After detailed discussions, the Council decided that there should be one GST Appellate Tribunal with a Principal Bench and State Benches. Each Bench of the Appellate Tribunal would consist of four members i.e. two Judicial Members and two Technical Members, one Member from Centre and one from the State but in all cases where the input tax credit involved, or fee/fine/penalty imposed does not exceed Rs. 50 lakh rupees, it would be heard by a single Member and in all other cases, it shall be heard by minimum one Judicial Member and one Technical Member.

3.47 Regarding the constitution of the ScSC for Technical Member (State), the Council agreed with the proposal of GST Council Secretariat that the committee shall consist of the Chief Justice of the High Court, where the Bench is located; senior-most Judicial Member in the State, and where no Judicial Member is available, a retired Judge of the High Court in whose jurisdiction the State Bench is located, as may be nominated by the Chief Justice of such High Court; Chief Secretary of the State in which the Bench is constituted and one Additional Chief Secretary/Principal Secretary/Secretary of the State in which the State Bench is located as may be the nominated by such State Government. Regarding the ScSC for appointment of other Members, it was agreed to go ahead with the recommendations made by GoM.

3.48 The Hon'ble Chairperson directed the Secretary to the Council to make a draft of the changes proposed consequent to the discussion in the Council and to circulate it electronically

among the Members to invite their comments and thereafter, to make further changes to the draft.

3.49 The Secretary proposed that the Council may authorise the Hon'ble Chairperson to finalise the draft and proposed for the closure of the GoM on GSTAT.

3.50 **The Council agreed to authorise the Hon'ble Chairperson to finalise the draft and also agreed to close the GoM on GSTAT.**

Agenda item 3: Ratification of the Notifications, Circulars and Orders issued by the GST Council

4.1 The Secretary took up the next agenda pertaining to ratification of the Notifications, Circulars and Orders issued by the GST Council at Sr No. 3 (page no. 130-133 of the agenda).

4.2 The Hon'ble Member from Delhi referred to the Circular No. 189/01/2023-GST dated 13.01.2023 (on page 133) of the Agenda No 3 and stated that Kachri Papad is being taxed at 18% whereas Papads are taxed at Nil rate and suggested that Kachri Papad should be taxed at 5% or nil rate and he also submitted a representation on this matter to the Chairperson. The Secretary took note of this suggestion and assured that the issue would be taken up by the Fitment Committee and would be presented in future GST Council meeting.

4.3 The Hon'ble Member from Tamil Nadu raised a technical concern on Circular No. 187/19/2022-GST dated 27.12.2022 (Page No. 133) pertaining to said agenda which states that proceedings finalized against the corporate debtor under Insolvency and Bankruptcy Code, 2016, reducing the amount of statutory dues payable shall become final under Section 84 of the CGST Act. Hon'ble Member stated that the actual power to write off is only vested in the Government and it is not vested in this code. Although it could be sent as a recommendation to the Government, only the Government actually could write off its dues.

4.4 Pr. Commissioner, GST Policy Wing clarified that this issue was discussed in Law Committee and was taken up in the last GST Council meeting. Section 84 of CGST Act provides that if any Government dues are reduced in **any proceeding** then the concerned Commissioner shall give intimation of the reduced amount to the concerned person and to the appropriate Authority with whom the recovery proceedings are pending .The view was taken that the proceedings which are conducted under IBC also relate to reducing the amount of liability and are covered under Section 84 of CGST Act and thus such orders shall have the effect of reducing the Government dues under CGST/SGST/IGST Act. So, the Law Committee had taken the view that the Commissioner can issue intimation under DRC 25 under Rule 161 of the CGST Rules reducing the amount of the liability and then such amount can be reduced from the liability register.

4.5 The Hon'ble Minister from Tamil Nadu stated that the Commissioner would be acting without the actual consent of the Finance or other department while removing the liability from the books and that there may be requirement of some additional paper work or procedure to validate

it. Principal Commissioner, GST Policy Wing requested Tamil Nadu to send the reference to Law committee in this regard so that Law Committee can examine it in detail.

Agenda item 4 - Recommendations of the Law committee for the consideration of the GST Council.

Agenda Item 4(i): Amendment in Section 23 of the CGST Act, 2017

5.1 The Principal Commissioner, GST Policy Wing gave a presentation **(Annexure-4)**. He stated that Agenda item 4(i) is regarding amendment in the Section 23 of CGST Act. In the 48th GST Council meeting, it was recommended to give overriding effect to Section 23 of CGST Act over Section 24 and sub-section (1) of Section 22 of the CGST Act retrospectively with effect from 01.07.2017 so as to provide exemption from mandatory registration for small traders for intra-state supply of goods through e-commerce operators. However, the said amendment has created an anomaly that persons, who are required to pay duty under reverse charge mechanism on their inward supplies, would not be required to get registered if they are otherwise not making any taxable supply themselves, which was not the intention behind the said amendment. To correct this anomaly, the Law Committee has recommended after detailed discussions that the Section 23 of CGST Act be amended retrospectively with effect from 01.07.2017 to give overriding effect only to sub-section (2) of Section 23 (and not to sub-section (1) of section 23) over Section 24 and sub-section (1) of Section 22 of CGST Act. This was agreed to in the officer's meeting held on 17.02.2023 also.

The Council agreed with the said recommendation of the Law Committee.

Agenda Item 4(ii): Proposal to extend time period mentioned in Section 62(2) of the CGST Act, 2017

5.2 The Principal Commissioner, GST Policy Wing informed that the Agenda Item 4(ii) is regarding an amendment in the Section 62 of CGST Act. He stated that presently when the return is not filed under Section 39 or Section 45 of CGST Act, even after service of a notice under Section 46 thereof, then best judgment assessment order can be issued by the proper officer under sub-section (1) of Section 62. If the return is filed within 30 days of the service of the said assessment order, then the said assessment order (AO) is deemed to be withdrawn as per provisions of sub-section (2) of section 62. It was represented by some tax administrations that in many cases, the taxpayers file the return after a period of 30 days of the service of the assessment order, due to which such assessment orders are not deemed to be withdrawn and therefore, the liability created by the AO remains in the books of accounts. However, as the taxpayer has already filed the return(s) and has paid his liability, therefore the liability created by the assessment order needs to be removed from the liability register. So, there was request to extend the time limit for deemed withdrawal of the best judgment AO. The issue was deliberated by the Law Committee and the Law Committee recommended that the period of 30 days for deemed withdrawal of AO may be increased to 60 days, which could further be extended by another 60 days on payment of prescribed additional late fee.

5.2.1 The Principal Commissioner, GST Policy added that the Law committee also recommended that in all the past cases where the returns could not be filed within 30 days of the best judgment assessment orders, one time amnesty may be provided to the tax payers for conditional deemed withdrawal of such assessment orders if the said returns are filed along with due interest and late fee upto a specified date, irrespective of whether the appeal has been filed or not against the assessment order, or whether the said appeal has been decided or not. He also mentioned that if approved by the GST Council, the date for the amnesty scheme may be finalized in consultation with GSTN, based on readiness of the portal for implementation of the same.

5.2.2 Hon'ble Member from Tamil Nadu suggested that the time period under Section 62(2) of CGST Act, 2017 may be increased to 90 days, instead of 60 days with an additional 60 days as proposed, to synchronize it with the time limit of filing of appeal or recovery.

5.2.3 The Principal Commissioner, GST Policy Wing clarified that the period of 60 days, with an additional period of 60 days, has been recommended by the Law Committee to align it with the time period of appeal which is 90 days, extendable by another 30 days by the Appellate Authority.

The Council agreed with the said recommendation of the Law Committee. Council also recommended that the date for amnesty scheme may be finalized based on preparedness of the portal.
Agenda Item No. 4(iii) - Change in Place of Supply of transportation of goods under Section 13(9) of the IGST Act, 2017

5.3 Principal Commissioner, GST Policy Wing stated that the third agenda is about the change in place of supply of transportation of goods under Section 13(9) of IGST Act 2017. He said that in the 48th GST Council meeting, it was decided to delink the place of supply of service of transportation of goods, in cases where both the supplier of services as well as the recipient of services are located in India, from the destination of the goods. Section 13 of the IGST Act 2017 provides for "Place of supply" of services where the location of supplier of services or location of recipient of services is outside India and it provides that the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the destination of goods. The issue was deliberated by the Law Committee, which has recommended that to remove this anomaly, sub-section (9) of section 13 of IGST Act may be omitted so that by default rule, the place of supply of services of transportation of goods, in cases where the location of supplier of services or location of recipient of services is outside India, shall become the "location of the recipient" only.

The Council agreed with the said recommendation of the Law Committee.

Agenda Item 4(iv): Rationalisation of late fee for FORM GSTR-9 and amnesty for non- filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10

5.4 The Principal Commissioner, GST Policy Wing stated that while the late fee for delayed filing of FORM GSTR-1, FORM GSTR-3B, FORM GSTR-4 and FORM GSTR-7 has already been rationalized from June 2021 onwards, based on the recommendations of the Council, however, the late fee for delayed filing of annual return in FORM GSTR-9 has not been rationalized as yet. Requests have been received from various stake holders as well as tax administrations for rationalization of late fee for delayed filing of annual returns. He further stated that requests have also

been received from taxpayers as well as tax administrations to provide an amnesty scheme for waiver/ reduction of late fee for non-filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10.

5.4.1 He stated that the same was deliberated by the Law Committee and the Law Committee has recommended that late fee for delayed filing of annual return may be rationalized for the taxpayers having aggregate turnover upto Rs. 20 crore in a financial year. He informed that the Law Committee has recommended two slabs. First slab for Registered persons having an aggregate turnover of upto Rs. 5 crore in the said financial year, for which the recommendation is to reduce the existing late fee of Rs 100/- + Rs 100/- (CGST & SGST respectively) per day, subject to maximum of 0.25% of the turnover, to Rs 25/- per day, subject to a maximum of an amount calculated at 0.02 percent of the turnover in the State or Union territory, under CGST Act with similar late fee under SGST Act. The second slab for Registered persons having an aggregate turnover of more than Rs. 5 crore and upto Rs. 20 crore in a financial year, for which late fee has been proposed to be reduced to Rs 50/- per day subject to a maximum of an amount calculated at 0.02 percent of the turnover in the State or Union territory, under CGST Act with similar late fee under SGST Act. He stated that as per the slabs provided, maximum late fee for delayed filing of annual return would be Rs 20,000/- for the taxpayer with aggregate turnover of Rs 5 crore and would be Rs 80,000/- for the taxpayer with aggregate turnover of Rs 20 crore.

5.4.2 He further stated that Law Committee has also recommended one time Amnesty Scheme for non-filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10 as per the Agenda. He informed that Amnesty Schemes for non-filers of FORM GSTR-1 and FORM GSTR-3B were brought a number of times in the past. In respect of non-filers of FORM GSTR-4, amnesty schemes have been brought twice, but was not brought out last time, when amnesty scheme was brought out for FORM GSTR-1 and FORM GSTR-3B. He stated that no such amnesty schemes have been brought out yet for non-filers of FORM GSTR-9 and FORM GSTR-10.

5.4.3 He also mentioned that waiver/ reduction of late fee under the proposed Amnesty scheme would be applicable only if the said returns are filed during a specified period of three months, as proposed in the Agenda. He further stated that the specified time period for the proposed amnesty scheme may be finally decided, if approved by the GST Council, on the basis of preparedness of the GSTN portal for the implementation of the scheme and after consultation with GSTN.

5.4.4 The Hon'ble Member from Rajasthan thanked Law Committee for providing the Amnesty scheme for FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10 and stated that Rajasthan Government has taken an initiative in its Budget 2023-24 to provide Amnesty scheme in respect of FORM GSTR – 1 and FORM GSTR –3B and has waived off the share of state for the late fee, which will be borne by the state. He stated that this will ensure greater return filing and would eliminate the hurdles. He suggested that the proposed Amnesty scheme for non-filers should be extended to FORM GSTR-1 and FORM GSTR-3B also, considering the condition of the MSMEs.

5.4.5 The Principal Commissioner, GST Policy Wing mentioned that this was deliberated by the Law Committee in detail and it was observed that the Amnesty schemes for non-filers of FORM GSTR-1 and FORM GSTR-3B have been brought out a number of times. Law Committee took a view that there is no need for an amnesty scheme again for non-filers of FORM GSTR-1 and FORM

GSTR-3B, as the filing for both these Returns has now been systematically improved and stabilized.

5.4.6 The Hon'ble Chairperson clarified that irrespective of the emulate worthiness of the different practices followed by different States, the GST Council cannot advise any State to follow any practice followed by a particular State. She further stated that if any State finds any other State practices appealing and fit for its functioning, then the State has the autonomy to independently implement such practices. Further, the Hon'ble Chairperson, as Union Finance Minister informed that in the Finance Budget 2023-24, the MSME Sector has been substantially taken care of and various measures have been taken for the MSME Sector. She further stated that number of provisions had been provided in the Budget 2023-24 for the benefit of MSMEs, including the provision that if any payment due to a micro or small enterprises is not paid by the PSUs within the time limit as specified, then they will not be able to claim offset within that financial year. Legal provisions have been made where all PSUs under Centre have been instructed to clear the payments due to MSMEs within the due 45 days for claiming the offset for that year. However, such instructions are not applicable for PSUs under State. She further stated that this provision has been brought out to promote timely payments to MSMEs. She clarified that both the Centre and States are taking substantial measures to protect and promote the MSMEs in best possible way.

5.4.7 Hon'ble Member from Tamil Nadu expressed his apprehension regarding reduction on the cap of late fee from 0.25% to 0.02% which would be a huge drop by cutting it to almost 90% and whether such steep reduction would act as a deterrence for delayed filing of annual return in FORM GSTR-9. He queried whether capping the late fee at an amount of Rs 80,000/- could be deterrent for a taxpayer having an aggregate turnover of Rs 20 crore. He stated once the penalty becomes stagnant to a certain amount, then it would not matter to the taxpayer for delaying the filing of return after that point of time, and thus, it would not act as a deterrent for non-filing of the Return. He mentioned that it needs to be seen whether it would be rational to reduce the capping of 0.25% to 0.02% in one step to facilitate trade or would there be any negative impact of reducing the upper limit. He also stated that the upper limit should be such that it is a deterrent for delayed filing of the return to keep the system intact. He further suggested that instead of going to 0.04% (0.02% + 0.02%) from 0.5% (0.25%
+0.25%) in the one go, it would be more rational to reduce it to 0.1%.

5.4.8 The Secretary then stated that the setting up of upper limit is open for discussion and clarified that earlier the upper limit was 0.5% (0.25% + 0.25%) of the turnover and the recommended upper limit is 0.04% (0.02% + 0.02%) of the turnover. He further emphasized that the upper limit is on the turnover and not the profit and it was felt by the Law Committee that the 0.5% of the turnover is high, thus, it was recommended by the Law Committee to reduce the upper limit to 0.04% but it could be reconsidered by the Council.

5.4.9 Hon'ble Member from Maharashtra welcomed the reduced upper limit and stated that it could be accepted as it is only for the late fee and not interest. He supported the recommendation of the Law Committee and stated that when we are promoting ease of doing business, then giving such relief for late filing would not hamper anything and a very high late fee should not be insisted upon.

5.4.10 Hon'ble Minister from Haryana supported the Law Committee recommendations and stated that there are already various penalties for other returns and the reduced upper limit of Rs 20000/-

for Rs 5 crore turnover would be more than enough as late fee for GSTR-9.

The Council agreed with the said recommendations of the Law Committee along with the draft Notifications. Council also recommended that the date for amnesty scheme may be finalized based on preparedness of the portal.

Agenda Item 4(v) Amendment in CGST Rules and Notification for Biometric –based Aadhaar Authentication of registration applicants

5.5 The Principal Commissioner, GST Policy Wing informed that rule 8 and rule 9 of CGST Rules have been amended with effect from 26.12.2022 vide Notification No. 26/2022- Central Tax, based on the recommendations of the Council in 48th meeting, to mandate biometric-based authentication of Aadhaar for high-risk applicants and also to provide for exemption from such biometric-based authentication in States/ UTs other than State of Gujarat. However, the said amendments has resulted in certain anomalies, as detailed in the agenda. He mentioned that Law Committee deliberated on the matter and recommended that rule 8 of CGST Rules may be amended with effect from 26.12.2022 to substitute sub-rule (4A) and to amend sub-rule (4B) as detailed in the agenda. Law Committee has also recommended that Notification No. 27/2022- Central Tax dated 26.12.2022 may also be amended with effect from 26.12.2022 to correct the anomaly. The Secretary sought for the comments from the members in case they did not agree with the amendments recommended by Law Committee.

The Council agreed with the said recommendations of the Law Committee along with the draft Notifications.

Agenda item 4(vi): Extension of time limit for application for revocation of cancellation of registration

5.6 Principal Commissioner (GST PW) informed that a recommendation has also been made by the Law Committee for extension of time limit for filing application for revocation of cancellation of registration, as a facility for the benefit of MSME Sector. He mentioned that a number of taxpayers could not file their application for revocation of cancelation of registration within the time limit specified under Section 30 of CGST Act. He stated that representations have been received to the effect that the present time limit of 30 days plus 30 days plus 30 days for applying for revocation of cancellation of registration under section 30 is quite less and there is a need to increase this time limit. Representations have also been received that in large number of cases, small taxpayers could not apply in time for revocation due to lack of funds or other reasons, adversely affecting business and there is a need to bring them again in mainstream by giving them a chance to revive their registrations.

5.6.1 He added that primarily, there were two recommendations of the Law committee regarding this agenda. The first recommendation is that the time limit for making an application for revocation of cancellation of registration may be raised from 30 days to 90 days and then, Commissioner or an officer authorized by him in this behalf can further extend this time period for a further period not exceeding 180 days on sufficient reason being shown. Law Committee also recommended that

timelines for filing application for revocation of cancellation of registration may not be hard-coded in the Act and may be prescribed through the Rules, for which section 30 of CGST Act and Rule 23 of CGST Rules may be amended as detailed in the agenda. The second recommendation of the Law Committee was that an amnesty scheme may be provided for filing of application of revocation of cancelation of registration in past cases where such application could not be filed within prescribed time limit and where the registrations have been cancelled due to non-filing of returns. He added that during the officers' meeting, it was suggested that the dates for the said amnesty scheme could be finalized in consultation with GSTN, based on the readiness of the portal.

The Council agreed with the recommendations of the Law Committee made in agenda item 4(vi), along with the suggestion made in the Officers' meeting.

Agenda item 4(vii): Extension of time limit under sub-section (10) of section 73 of CGST Act for FY 2017-18, FY 2018-19 and FY 2019-20.

5.7 Principal Commissioner (GSTPW) informed that there have been requests from tax administrations for further extension of time limit under Section 73 of CGST Act for issuance of Show Cause Notices (SCN) and Orders for financial year 2017-18, 2018-19 and 2019-20, considering that the scrutiny and audit were delayed because of Covid-19 pandemic. He informed that the issue was discussed by the Law Committee and it was observed that earlier, such extension was given for the F.Y. 2017-18. It was felt by the Law Committee that while there may be a need to provide additional time to the officers to issue notices and pass orders for FY 2017-18, 2018-19 and 2019-20 considering the delay in scrutiny, assessment and audit work due to COVID-19 restrictions, however, the same need to be made in a manner such that there is no bunching of last dates for these financial years as well as for the subsequent financial years. After detailed deliberations, Law Committee recommended that such time limits may be extended for another three months each for the FY 2017-18, 2018-19 and 2019-20. It was discussed in detail in officers meeting where one view was that extension for FY 2017-18 had already been given and further extension may create a perception that it is not a tax friendly measure and against the interest of taxpayers.

5.7.1 The Secretary stated that the Law Committee has recommended the extension of time limit for issuance of SCN and orders. However, the time period for issuance of notices and passing orders for these financial years has already been extended considerably due to extension in due dates of filing annual returns for the said financial years. Further, for FY 2017-18, the date of passing order has already been extended till September 2023. It has been proposed to extend it further from September 2023 to December 2023. He mentioned that while the request of some of the tax administrations was to extend the time limit for a longer period, however, keeping the taxpayers' interest in mind, the Law committee has recommended an extension of only three months for these three financial years. Since all the states have agreed, the said time limits could be extended.

5.7.2 Hon'ble Member from Bihar stated that while this proposal could be considered, however, it should be decided that such an extension in timelines for these financial years under sub-section (10) of section 73 of CGST Act is being made for the last time.

The Council agreed with the recommendation of the Law Committee made in agenda item 4(vii), along with the proposed notification.

5.8 Hon'ble Member from Himachal Pradesh stated that he wanted to raise one Agenda concerning the Law Committee. He stated that his concerns related to wrong interpretation of place of supply by the adjoining states resulting in huge loss to the State. He informed that the matter was listed in the agenda for the 37th Council meeting and thereafter, the issue has not been placed as an agenda despite the State raising the matter. He stated that the State had given suggestions for resolution of the issue by amending section 10 (1) of the IGST Act and that the State has been losing considerable revenue for the last four years due to delay in addressing the said issue. He informed that due to less vehicle agencies in Himachal Pradesh, people buy their vehicles from other States and get these vehicles registered in Himachal Pradesh, resultantly Himachal Pradesh does not get any tax benefit .He stated that he hoped that the issue would be addressed in the next GST Council meeting. Principal Commissioner (GSTPW) informed that that this issue was taken up by the Law Committee and two contradictory views emerged on the issue, due to which the Law Committee has not been able to reach a conclusion. He assured that this issue would be taken up again in the Law committee meeting and would be taken up in the future GST Council Meeting.

Agenda item 5: Recommendations of the Fitment Committee for the consideration of the GST Council

6.1 The Secretary introduced the agenda item relating to the recommendations of the Fitment Committee. These recommendations had been given in four (04) Annexures where the first three related to Goods and the fourth one related to Services. The first Annexure provided details of the items (Goods) where tax rate changes or clarifications were being recommended; the second Annexure listed items (Goods) where no tax rate changes were being recommended and the third Annexure listed items (Goods) where the issues were deferred by the Fitment Committee for further examination in relation to Goods. The fourth Annexure listed the recommendations for making changes in GST rates or for issuing clarifications in relation to Services.

6.2 The Secretary to the Council stated that the recommendations of the Fitment Committee were discussed in detail in the Officer's Meeting on 17.02.2023 and most of recommendations were agreed to by all. The Secretary then asked the Principal Commissioner, GST Policy Wing, CBIC to take the Council through a brief presentation on the recommendations of the Fitment Committee.

6.3 Principal Commissioner, GSTPW gave a presentation **(Annexure-5).** He stated that there were five agenda items where the Fitment Committee had recommended the changes in the Tax rate or issuance of clarifications which were in Annexure-1 of the Fitment agenda. The first issue pertained to tax rate on *Rab* on which a clarification was issued pursuant to the last GST Council meeting that *Rab* would be classified under HSN 1702 with GST rate of 18%. He stated that Uttar Pradesh had brought up the matter and Fitment Committee after detailed discussions agreed that Rab was liquid form of Jaggery. Fitment Committee recommended similar tax rates for Rab as exists for Jaggery i.e. 5% if sold in pre-packaged and labelled form and NIL if sold otherwise.

6.4 The Hon'ble Member from Tamil Nadu suggested that since all Hon'ble Members had gone through the Fitment Agenda therefore only objections from Hon'ble Members might be sought.

6.5 The Hon'ble Member from Uttar Pradesh stated that their State had brought up this agenda

and *Rab* was a liquid form of Jaggery. He agreed with the recommendation of the Fitment Committee that similar tax rates should be applicable on both *Rab* and Jaggery.

Decision: The Council agreed with the recommendation of the Fitment Committee to reduce the tax rate on Rab as it exists for Jaggeryand to clarify that the issue for the past periods may be regularized on as is basis.

6.6 The Secretary sought the opinion of Hon'ble Members on the recommendation of the Fitment Committee to reduce the tax rate on pencil sharpener from 18% to 12%.

Decision: The Council agreed with the recommendations of the Fitment Committee to reduce the GST rate on pencil sharpener from 18% to 12%.

6.7 The Hon'ble Member from Punjab thanked the Council for reducing the tax rate on Pencil Sharpeners.

6.8 The Secretary then sought the opinion of the Hon'ble Members on recommendations of the Fitment Committee regarding IGST exemption to a Tag, tracking device or data logger affixed on durable container at the time of import, as is available to container under Customs notification 104/94-Cus ; and amendment of the entry at Serial number 41A of Notification number 1/2017-Compensation Cess (Rate) pertaining to exemption from compensation Cess on coal rejects when supplied to and by a coal washery on which Compensation Cess had already been paid subject to the condition that no ITC has been availed by any person.

Decision: The Council agreed with the recommendations of the Fitment Committee and recommended to explain that a tag, tracking device or data logger already affixed on a container of durable nature at the time of import shall be eligible for IGST exemption, as is available to the said container under the notification 104/94-Cus and also agreed that no such exemption would be available to tags, tracking devices and data loggers when imported separately. The Council also agreed for amendment of the entry at Serial number 41A of Notification number 1/2017-Compensation Cess (rate) as recommended by the Fitment Committee.

6.9 The Secretary then requested the opinion of the Hon'ble Members on reduction in the GST rate on Millet based health mix products consisting at least 70 % of Millets. He informed the Council that this matter was discussed at length during Officers' Meeting and it was felt that this issue required further examination by Fitment Committee as regard to the products which would be covered in this category along with their classification. He stated that if the Council agreed, the matter might be deferred.

6.10 The Hon'ble Member from Odisha stated that Millets are a seeded grass with high nutritional value and which are traditionally grown in Odisha. He stated that Odisha had a special Millets promotion mission and suggested that the recommendation of the Fitment Committee was good and acceptable however the percentage of Millets in the product mix should be brought down from 70% to 50%.

6.11 The Hon'ble Member from Rajasthan stated that the composition of Millet in the product should remain at 70% because if it is reduced then bigger market players would come up with their products to avail benefit of reduced taxes.

6.12 The Hon'ble Chairperson sought the opinion of other Hon'ble Members on the suggestion of Hon'ble Member from Odisha that the percentage of Millets in the product mix should be brought down from 70% to 50% and that if there was agreement on the issue, Council could recommend the same otherwise if agreed to all Hon'ble Members, the matter might be referred back to the Fitment Committee for further examination.

6.13 The Hon'ble Member from Haryana stated that he was in agreement with suggestion of Hon'ble Member from Odisha that the percentage of Millets in the product mix should be brought down from 70% to 50% as this is the international year of Millets.

6.14 The Hon'ble Chairperson stated that reducing the percentage of Millet in the product mix would not benefit the Millet growers much.

6.15 The Hon'ble Member from Bihar stated that the percentage of Millets in the product mix should be kept at 70%.

6.16 The Hon'ble Member from Uttar Pradesh suggested that the matter should be referred back to the Fitment Committee for further examination.

Decision: The Council agreed to send back the proposal to the Fitment Committee for further examination.

6.17 Principal Commissioner, GSTPW then presented the Fitment agenda pertaining to the goods where no changes had been recommended by the Fitment Committee. He stated that in this agenda one proposal was for reduction of GST rate on *Tendu* leaves which was proposed by Hon'ble Member from Odisha in the last GST Council meeting. He informed that Odisha, Madhya Pradesh and Chhattisgarh were invited to the Fitment Committee meeting for their views on the issue. Odisha requested for reduction of GST rate on *Tendu* leaves from 18 % to Nil or 5% whereas Madhya Pradesh and Chhattisgarh were of the opinion that no rate reduction should be recommended on *Tendu* leaves as post GST the trading of *Tendu* leaves had increased. In view of this Fitment committee had suggested no change in GST rate on *Tendu* leaves. He further informed the Council that in the Officers Meeting, Telangana also supported the reduction in tax rate on *Tendu* leaves, however besides Telangana and Odisha, all other States were not in favour of any change in GST rate on *Tendu* leaves.

6.18 The Hon'ble Member from Odisha stated that in case Tendu leaves were exempted from GST, there would not be any loss in revenue to both the State and Central Governments. He further stated the *Tendu* leaves had no other use except making *Bidis* where the GST rate was already at highest slab of 28%. He also stated that initially the Fitment Committee had recommended 5% tax on *Tendu* leaves and even in VAT era the tax rate was 5 % on this item.

6.19 The Hon'ble Chairperson enquired whether tax reduction on *Tendu* leaves would benefit the tribal people who are collecting *Tendu* leaves or the traders who were aggregating the *Tendu* leaves.

6.20 The Hon'ble Member from Odisha stated that the rate reduction on Tendu leaves would eventually help the Tendu leave pluckers/collectors mostly Tribal women numbering approximately 8 Lacs in his State.

6.21 The Hon'ble Member from Maharashtra stated that as per the Panchayat Extension to Scheduled Areas (PESA) Act, 1996, the ownership of *Tendu* leaves has now gone to the Tribal community and it was the Forest department which conducts the auction to help the *Tendu* leave collectors.

6.22 The Hon'ble Member from Madhya Pradesh welcomed the recommendation of the Fitment Committee suggesting no change in tax rate of *Tendu* leaves and stated that his state is leading producer of the *Tendu* leaves in the country with 25% share in *Tendu* leaves collection. He stated that in Madhya Pradesh, there is a three tier co-operative mechanism for procurement of *Tendu* leaves and the incidence of tax is on District cooperatives and not on *Tendu* leaves collectors as GST on this item is applicable on RCM basis. He further stated that post GST there has been no negative impact on Tendu leaves collection and in Madhya Pradesh 75% of the profit from Tendu leaves is given back to the tribal community for their welfare. He further requested that Madhya Pradesh should be included into the Fitment Committee.

6.23 The officer from Chhattisgarh also supported the recommendation of the Fitment Committee suggesting no change in tax rate of *Tendu* leaves.

6.24 The Secretary stated that out of three States, Madhya Pradesh and Chattisgarh were in favour of status quo however Odisha is supporting reduction in tax rate on *Tendu* leaves. He further stated that there might be implication for other States also since GST is a consumption/destination based taxation. He further stated that the view of Hon'ble Member from Odisha was correct that there was no tax implication provided that there was no evasion. He further stated that in order to bring the unorganized sector of Tendu leaves into the supply chain, tax was levied on supply of this produce on RCM basis.

6.25 The Hon'ble Member from Andhra Pradesh supported the view of Odisha that if the GST on *Tendu* leaves was reduced, then the aggregator might pass on some benefit of tax reduction to the *Tendu* leave pluckers.

6.26 The Secretary stated that if all Hon'ble Members agreed, then the tax rate might be reduced to 5% on RCM basis which would ensure that the item would remain within the value chain while benefit could accrue to the pluckers.

6.27 The officer from Telangana suggested reducing the GST rate on *Tendu* leaves.

6.28 The Secretary stated that the tax rate on *Tendu* leaves was discussed in the 15th meeting of the GST Council and though the recommendation of the Fitment Committee was for 5% but the Council decided to levy 18% GST on *Tendu* leaves. It was deliberated again in the Council, however no change was recommended. He stated that as it was a Council decision, the Council might continue with no change in the GST rate on *Tendu* leaves.

Decision: The Council agreed with the recommendation of the Fitment Committee for retaining the GST rate on *Tendu* leaves.

6.29 Principal Commissioner, GSTPW stated that the second issue was regarding GST rate reduction on ship and vessels for breaking up as proposed by Ministry of Shipping. He stated that in the Officers meeting, there was consensus to maintain the status quo on this item.

Decision: The Council agreed with the recommendation of the Fitment Committee for retaining the GST rate onship and vessels imported for breaking up.

6.30 Principal Commissioner, GSTPW stated that the next agenda was regarding compensation cess on utility vehicles like SUV and MUV which emerged from the last Council meeting. Haryana was asked to come up with a proposal for the examination by the Fitment Committee. However, during examination of the proposal, it was found that further examination was required in this matter and accordingly the Fitment Committee recommended for deferring the matter.

6.31 The Hon'ble Member from Haryana suggested that the entry 52A and 52B of the Notification number 1/2017-Compensation Cess (rate) may be merged into one category with uniform Compensation Cess rate of 22% which would resolve the whole issue without requirement of any further examination.

6.32 The Commissioner, GSTPW clarified that Fitment Committee would examine the merging of entry 52A and 52B of the Notification number 1/2017-Compensation Cess (rate) and matter would be presented again before the Council.

Decision: The Council agreed with the recommendation of the Fitment Committee regarding deferring this matter for further examination by the Fitment Committee and to be brought back before the GST Council in the next meeting.

6.33 Principal Commissioner, GSTPW stated that there were two agenda points regarding services (Annexure-IV). The first issue was to exempt the services supplied by the National Testing Agency and similar other agencies of Central and State Governments by way of conduct of entrance examination for admission to educational institutions. The Fitment Committee had recommended for insertion of an explanation in notification number 12/2017- CT(R) dated 08/06/2017 which was discussed in the Officers meeting and agreed to. He further stated that the other agenda on services was to examine whether the services supplied by the Courts/ Tribunals which are commercial in nature like renting of space to telecom towers and renting of lawyers chambers etc., can be taxed under Reverse Charge Mechanism (RCM) The Fitment Committee recommended that same dispensation with regard to payment of GST under RCM as applicable to Central and State Governments might be extended to the Courts and Tribunals also. There was consensus in the

Officers meeting on this.

Decision: The Council agreed with the recommendations of the Fitment Committee regarding the agenda points on Services as detailed in Annexure-IV.

6.34 The Hon'ble Member from Himachal Pradesh stated that Himachal Pradesh, Jammu and Kashmir and Uttarakhand have a large apple based economy However' the apple industry is getting affected due to increase in the tax rate on carton boxes from 12% to 18%. He requested that the rate on carton boxes may be reduced to 5% as this would help the apple growers in Himachal Pradesh, Jammu and Kashmir and Uttarakhand. He requested that the issue may be got examined by the Fitment Committee.

6.35 The Hon'ble Chairperson stated that since carton boxes are used in various industries and not only for packaging fruits, the proposal to reduce tax rate on carton boxes used for packaging horticulture produce only, as suggested by the Hon'ble Member from Himachal Pradesh, might prove difficult to implement at ground level, based on the end use.

6.36 The Hon'ble Member from Maharashtra stated that they support the proposal of Himachal Pradesh as in Maharashtra the mango growers use wooden packaging boxes which is detrimental to environment. He also suggested that the reduced tax rate on carton boxes may be considered for horticulture industry.

6.37 The Secretary stated that Himachal Pradesh may send a detailed representation in this regard and Fitment Committee would examine the issue.

Agenda Item 6 : Report of Group of Ministers (GoM) on Capacity Based Taxation and Special Composition Scheme in certain sectors on GST

7.1 The Secretary requested the Hon'ble Member from Odisha (Convenor of GoM) to present Agenda Item 6 i.e. the Report of Group of Ministers (GoM) on Capacity based taxation and Special Composition Scheme in certain sectors on GST.

7.2 The Hon'ble Member from Odisha thanked the Council for providing him with an opportunity to deliberate on the issue as Convenor and he also thanked the members of GoM for their cooperation, valuable inputs and excellent deliberations. He gave a presentation **(Annexure-6)** and informed the Council that it was decided in the 42nd meeting of the GST Council to form a GoM on Capacity based taxation and Special Composition Scheme in certain sectors on GST. The GoM constituted vide OM No. S-31011/12/2021-DIR(NC)-DOR consisted of Sh. Manish Sisodia, Hon'ble Deputy Chief Minister of Delhi; Sh. Dushyant Chautala, Hon'ble Deputy Chief Minister Haryana; Sh. K.N Balagopal, Hon'ble Minister for Finance Kerala; Shri Jagdish Devda, Hon'ble Minister for Finance Madhya Pradesh; Sh. Suresh Kumar Khanna, Hon'ble Minister for Finance Uttar Pradesh and Sh. Subodh Uniyal, Minister for Agriculture Uttarakhand. The mandate of the GoM was to examine the possibility levy of GST based on the capacity of manufacturing unit and special composition scheme in certain evasion prone sectors like pan masala, gutka, brick kiln, sand mining etc. with reference to the current legal provisions; to examine whether any change is required in legal

provision to allow such levy; to examine the impact of such levy on the destination nature of current GST design and to examine any other administrative or systemic mechanism to block leakage in this sector and to examine the impact of levy on reverse charge on Mentha Oil and to examine if there could be other class of supplies that could be subjected to reverse charge to augment revenue.

7.3 The Hon'ble Convenor of GoM informed the Council that the GoM had held three meetings. The first meeting was held on 06th July, 2021, the second meeting was on 31st August, 2021 and the third and the final meeting was held on 07th July, 2022. He then informed the Council that the GoM had extensively deliberated on broad challenges associated with the complexity involved in the implementation of Capacity based levy in this sector and stated that GST is a destination-based tax on supply of goods and services and not on their production. He further asserted that the Constitution does not provide authority for capacity based levy of GST. He also stated that capacity based taxation is extremely complex and requires frequent changes in the rate structure and emphasized that there are no further check and verification in supply chain which could lead to revenue leakages. It was also emphasized that capacity-based taxation suppresses the competition and goes against the small producers who are not capable of making huge investment in capital infrastructure. He then pointed out that such system has deep rooted malice and may encourage 'officer- producer' collision at the level of jurisdictional officers.

7.4 The Hon'ble Convenor of GoM further discussed the international practices that are common in this trade and stated that the GoM agreed that GST evasion is rampant in this sector. He stated that tax evasion in tobacco products is an internationally common practise and emphasized that alternate systematic enforcement and administrative mechanism needs to be devised to curb evasion and enhance compliance. He then referred to track and trace method-an internationally accepted practise to curb illicit trade in tobacco sector with the help of electronic means. He then suggested options for enhancing compliances such as registration of details of machines and stated that the manufacturer of tobacco products should take registration of each machine and should be required to disclose the make, year of production, number of tracks and capacity of machine. He also suggested for a Special Monthly Return indicating Machine wise/shift wise production and disclosing details like machines disposed off, machine added and inputs procured and utilized in quantity and value terms, product-wise and brand-wise details of clearance in quantity and value terms, shift- wise records of reading of electricity meters and DG Set meter, waste generation stock, etc. He also suggested certification of production capacity and stated that production capacity and quantity in unit per pouch/container shall be duly certified by a registered Chartered Engineer. He thereafter suggested that copy of declaration in respect of production capacity should be submitted to other department/ agency/organization, etc. He then suggested for disclosure of details of non-working/ partially working machines. The Hon'ble Convenor concluded the report and invited comments from the Members of the Council.

7.5 The Hon'ble Member from Uttar Pradesh, who was also a member of the GoM thanked the Hon'ble Chairperson for taking a special interest in capacity based taxation and special composition scheme in certain sectors in GST. He stated that the report has a provision of Special Monthly Return indicating machine wise/shift wise production and disclosing details like machine disposed-off, machine added, and inputs procured and utilized in quantity and value terms etc. He stated that if the detail of labourers is also added in the return, it would help in verification and cross examination of production. He also emphasized that sometimes large-scale manufacturers take registration in the name of dummy persons in lieu of some remuneration and if the goods are seized, then the

responsibility is fixed on the dummy person instead of the actual manufacturer and therefore, he emphasized that more efforts are required to curb this practise. He stated that despite the keen interest evinced by the Hon'ble Union Finance Minister of India in curbing such malpractices, there is a large-scale black marketing in the trade of Pan Masala. He thereafter stated that there is large scale evasion of tax in this sector as there is a high demand for these products in the market and even if such evasion is eventually caught, dummy persons are prosecuted and actual offenders walk free. He stated that if the recommendations of GoM are incorporated in totality, then the the supervisory authority/ inspection authority will have tremendous power in their hands and there could be a possibility to collude and manipulate the reports. He thereafter stated that such a capacity based taxation system is not within the purview of existing GST laws. He thereafter put forth his other point before the Council and suggested that the Council should ponder over as to which mechanism should be adopted to prevent the evasion of tax and suggested that as per his understanding at least 70 percent of the tax should be deposited in advance from the manufacturer depending upon the capacity of manufacturer, this measure could help curb the tax evasion to a great extent.

7.6 The Hon'ble Member from Rajasthan stated that there is a largescale black marketing in trade of tobacco products which is needed to be curbed and therefore, it needs to be seen whether it can be brought under capacity based taxation.

7.7 The Hon'ble Member from Madhya Pradesh stated that they had also received a suggestion in GoM to implement track and trace mechanism as a useful remedy to curtail the tax evasion. He requested the Council to consider this suggestion for checking the evasion.

7.8 The Hon'ble Member from Haryana stated that both cess and tax have been imposed on these items but the proposal of track and trace mechanism on these items have been discussed multiple times in the meetings of GoM for curbing tax evasion. He stated that it has been planned to implement the track and trace mechanism by 2028. He suggested that the Council should target fool proof implementation of track and trace mechanism on certain items within one year from the day of publication of the report and he also mentioned that even the third world countries such as Kenya are using track and trace mechanism to check evasion on tobacco products. He thereafter suggested that the timeline of implementation by 2028 as agreed upon in the report is protracted and the Council should consider reducing the said timeline. The Hon'ble Member from Rajasthan stated that they have already implemented track and trace mechanism for VAT on alcohol in Rajasthan and they requested the Council to consider the same for tobacco products.

7.9 The Secretary proposed that the Council could accept the report of GoM and that the suggestions made by the GoM would be looked into in detail by the Law committee and fitment committee including the track and trace method. He also stated that these committees would analyse in detail as to whether Compensation Cess should be imposed on ad valorem basis as it is now or whether specific rate can be imposed. He thanked the members of the GoM for the detailed consultations on the issue and for coming up with a very comprehensive report.

7.10 The Hon'ble Member from Uttar Pradesh then requested the Hon'ble Chairperson to accept the report of GoM however he emphasized that the matter should be forwarded to Fitment committee/ Law committee to deliberate upon a possible solution to curb the tax evasion in this

sector.

7.11 The Secretary sought the permission of the GST Council to close the GoM on Capacity based taxation and Special Composition Scheme in certain sectors on GST. The Hon'ble Chairperson thanked the Members of the GoM for their comprehensive report and also stated that the suggestion of Hon'ble Member from Uttar Pradesh to find a possible solution to curb tax evasion shall be considered by the Council.

The Report of the GoM was accepted by the Council.

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

8.1 The Secretary proposed the closure of the GoM on levy of Covid Cess on Pharma and Power Sector in Sikkim and thanked the Chairpersons and Member of these GoM for their detailed report.

The GST Council approved the closure of the GoM on Pharma and Power Sector in Sikkim.

Agenda Item 8: Closure of Group of Ministers (GoM) to examine the feasibility of implementation of e-way bill requirement for movement of gold and other precious stones.

9.1 The Secretary proposed the closure of the GoM to examine the feasibility of implementation of e-way bills requirement for movement of gold and other precious stones and thanked the Conveners and Members of these GoMs for their detailed report.

9.2 The Hon'ble Minister from Kerala stated that they had already made the presentation and the GST Council had accepted it. The draft rules regarding e-way bills based on the recommendations of the GST Council for making amendment to the Rule 138 of the CGST/SGST Rules had been submitted to the GST Policy Wing and Department of Revenue, Government of India. The amendments would enable the e-way bill to be modified to include particulars of movement of Gold and precious stones within the State.

9.3 The Pr. Commissioner GSTPW stated that Law Committee has received the draft rules from Kerala which will be discussed in Law committee and will be brought before GST council in the future meeting.

9.4 **The GST Council approved the closure of GoM to examine the feasibility of implementation of e-way bills requirement for movement of gold and other precious stones**.

Agenda Item 9: Issues recommended by GSTN

10.1 The Secretary introduced the agenda regarding five issues proposed by the GSTN which are as follows:

1. Proposed Changes in HR Policies and Transition Management from GSTN;
2. Proposal for Changes in the Revenue Model of GSTN and transition to the new Revenue Model (as amended and circulated on 18/02/2023);
3. Waiver of Interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC;
4. Data Archival Policy for the GST System; and
5. Implementation of facility to Generate Document Identification Number in GST Back Office for Model 2 States in compliance with the Supreme Court judgement in W.P 320 of 2022.

10.2 The Secretary informed the Council that revised revenue model of GSTN was discussed in the officers meeting and based on the feedback received with respect to clause five on "Funding for Future Capital Expenditure" it was noted that the proposed procedure for meeting capital expenditure through grant-in-aid from tax administrations would not be appropriate. Further, sanction and the accounting treatment would not be easy in the respective tax administrations as the Grant-in-aid is given in very specific set of circumstances where as GSTN works as a company on a cost recovery basis for the services provided. Therefore, this proposal was agreed to be dropped and clause five was deleted from the draft.

10.3 The Secretary stated that it was further agreed in the officers meeting that the demand for capital expenditure should also be incorporated in the advance user charges requested from tax administrations by GSTN. Tax administrations would be provided separate accounting for Capex and Opex. He proposed that in principle approval for this change in the draft revised revenue model of GSTN may be given by the GST Council.

10.4 The Secretary further stated that above proposal would lead to drafting changes, for which a preliminary draft was enclosed. The draft would be finalized by GSTN Board on the basis of in principle approval of the GST Council as proposed above. He informed the Council that all other proposed changes in this agenda remain the same.

10.5 The officer from Tamil Nadu stated that in the revenue model it was proposed that CAPEX contribution would be made by the different States based on the number of users. He suggested that instead, the CAPEX contribution should be based on the shareholding which would be more aligned to the accounting principles since permanent assets would be created through CAPEX.

10.6 The Secretary clarified that this expenditure is not in the nature of capital expenditure which was why the grant-in-aid model was not being proposed. This expenditure is being treated in the nature of revenue expenditure by both Centre and States and for this reason this expenditure is being proposed to be charged on the number of users and not as per shareholding. He further sought the approval of the Council on the proposals of the GSTN as detailed in the agenda.

Decision: The Council approved the proposals of the GSTN having taken note of the clarification given by the Secretary recorded in para 10.6 above.

Agenda item 10: Recommendations of the 17th IT Grievance Redressal Committee (ITGRC) for approval/decision of the GST Council

11.1 The Secretary presented the agenda item regarding recommendations of the 17th meeting of the IT Grievance Redressal Committee (ITGRC) before the Council which had two major agenda points. One pertained to the data fixes done by the GSTN as detailed in the agenda which was based upon the SOP approved by the Council in its 45th Meeting at Lucknow. The second pertained to reversal of interest on delayed filing of statement in Form GSTR-8 by three e-commerce operators due to technical glitches as detailed in the agenda.

The GST Council approved the recommendations made by the ITGRC during its 17th meeting.

Agenda item 11: Agenda on Report of Committee of Officers (CoO) on GST Audit along with Draft Model All India GST Audit Manual

12.1 The Secretary took up the agenda on Report of Committee of Officers (CoO) on GST Audit and informed that the Committee of Officers was constituted on GST Audit to prepare a draft Model All India GST Audit Manual. The said Manual was discussed in detail in the Officer's Meeting and the suggestions made by officers from States have been incorporated in the Manual by way of an additional note circulated in the GST Council Meeting.

12.2 The Secretary stated that if all the Members agreed then the draft GST Audit Manual can be circulated for information to all States.

12.3 The Hon'ble Member from Tamil Nadu stated that it is a draft model and many States have developed their own Audit Manual like Tamil Nadu. It was stated that it would be recommendatory in nature and the States could take guidance and follow the good points from the Model All India GST Audit manual.

12.4 In response of the Hon'ble Member from Tamil Nadu, the Secretary confirmed that this is only a model Audit Manual for guidance to States and States are free to make their own GST Audit Manual and proceed accordingly and the same is put up just for information of the GST Council. Accordingly, same was being circulated.

Agenda Item 13: Decisions of GST Implementation Committee for the information of the Council

13.1 Principal Commissioner, GST Policy Wing in his presentation informed the Council that a decision was taken by the GST Implementation Committee (GIC) regarding sharing of GST data with Department of Telecommunications (DoT), Ministry of Communications and the same was placed before the Council for information.

Decision: The Council took note of the decision of the GST Implementation Committee and ratified the same.

Agenda Item 14: Ad-hoc Exemptions Orders issued under Section 25(2) of the Customs Act, 1962 to be placed before the GST Council for information

14.1 The Secretary presented the Agenda No. 14 i.e., Ad-hoc exemption orders issued under Section 25(2) of the Customs Act, 1962 to be placed before GST Council for information. He informed that in the 26th meeting of the GST Council held on 10.03. 2018, it was decided that all the ad-hoc exemption orders issued with the approval of the Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014-Customs dated 19.08. 2014 as was the case prior to the implementation of GST, shall be placed before the GST Council for information. The Secretary informed the Council that two Ad-hoc exemption orders had been issued since last meeting of the GST Council. One order dated 11/01/2023 pertained to ad-hoc exemption from duty and taxation for the equipment and ammunition used for joint counter terrorism exercise (Tarkash-VI) and second order dated 06/02/2023 pertained to ad-hoc exemption for import of Cheetahs by the National Tiger Conservation Authority, Ministry of Environment, Forest and Climate Change.

Decision: The Council took note of the ad-hoc exemption orders issued.

Agenda Item 15: Review of the Revenue position under Goods and Service Tax

15.1 The Secretary presented the last agenda which is review of revenue position and informed that there is good growth in the revenue and further hoped that the growth would continue this year as well as the next year.

15.2 The Hon'ble Member from Kerala thanked the Hon'ble Chairperson for clearing the dues of compensation cess to Kerala by June and informed that State's growth of GST tax collection increased by 25% in comparison to last year. He further requested to continue the payment of Compensation Cess to States as there was a deficit of more than Rs.10,000/- crores even then because of the Covid and two continuous floods in Kerala. He stated that this issue was discussed earlier with the Hon'ble Union Finance Minister and it was very important issue as some States were facing serious financial difficulties. The Hon'ble Member also stated that Revenue Rationalisation Committee had reduced the taxes on luxury items from 28% to lower rates and that had affected their total revenue neutral position.

15.3 The Hon'ble Member from Rajasthan thanked the Hon'ble Chairperson for clearing their dues. He further informed that Rajasthan's AG Audit for the F.Y. 21-22 was about to be completed and requested to release the 80-90% of the total Compensation Cess without AG's certificate and the rest could be adjusted later. The Hon'ble Member also requested to release the amount due to them

for the F.Y. 21-22 before 31st March in this financial year.

15.4 The Secretary informed the Hon'ble Member that the 95% of the due amount is paid on provisional basis and AG's certificate is asked for the rest 5% and that the Hon'ble Finance Minister had announced this earlier and letters had been sent to the Chief Secretaries of the States for sending the AG's certificate.

15.5 Further, the Hon'ble Member from Rajasthan raised the issue of extending the period of Compensation Cess in support of Kerala.

15.6 Hon'ble Chairperson stated that it was impossible to extend period of Compensation Cess legally. If it was extended, then revenue would have to be raised by imposing Cess on items having 28% GST but Compensation Cess had already been extended till 2026 to service the loans taken during Covid. Further, extending the period of Compensation Cess would send the message to public that States want more revenue by imposing more taxes on them.

15.7 The Secretary in his concluding remarks stated that they had very long and detailed in- depth deliberations and sincerely thanked each and every Member for taking time out of their very busy schedule in the budget session. Especially he thanked Honourable Minister of State of Finance and the Honourable Minister of Finance and Corporate Affairs for taking out time on this holiday and spending so much time and giving guidance. He gave special thanks to Members of the GoMs and their Conveners for their valuable contribution. The recommendations made by the GoMs and approvals given would be taken forward.

15.8 The Hon'ble Chairperson stated that the GST Council had discussed and accepted the recommendations of the GoMs and extended her thanks to Conveners of the GoMs and thanked everyone for their contribution.

Annexure-1

List of Hon'ble Ministers from States/Uts who participated in the 49th Meeting of the GST Council held on 18th February, 2023

S. No.	Centre/States/Uts	Name of Hon'ble Minister	Charge
1	GOI	Smt. Nirmala Sitharaman	Union Finance Minister
2	GOI	Shri. Pankaj Chaudhary	Minister of State for Finance
3	Andhra Pradesh	Shri Buggana Rajendranath	Minister for Finance, Planning, Legislative Affairs, Commercial Taxes and Skill Development & Training
4	Bihar	Shri Vijay Kumar Chaudhary	Finance and Commercial Taxes Minister
5	Chhattisgarh	Shri T.S.Singh Deo	Minister, Commercial Tax (State Tax)
6	Delhi	Shri Manish Sisodia	Deputy Chief Minister and Finance Minister
7	Goa	Shri Mauvin Godinho	Minister for Transport, Panchayati Raj, Housing , Protocol and Legislative Affairs
8	Gujarat	Shri Kanubhai Desai	Minister for Finance
9	Haryana	Shri Dushyant Chautala	Deputy CM and Excise & Taxation Minister
10	Himachal Pradesh	Shri Harshwardhan Chauhan	Industries Minister
11	Jammu and Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Hon'ble Lieutenant Governor, UT of J&K

12	Kerala	Shri K. N. Balagopal	Finance Minister
13	Madhya Pradesh	Shri Jagdish Devda	Minister for Finance, Commercial Tax, Planning and Statistics
14	Maharashtra	Shri Deepak Vasant Kesarkar	Minister for Education and Marathi Language
15	Manipur	Dr. Sapam Ranjan Singh	Minister for Medical, Health & Family Welfare Department and Publicity & Information Department
16	Odisha	Shri Niranjan Pujari	Finance, Parliamentary Affairs and Health & Family Welfare Minister
17	Punjab	Shri Harpal Singh Cheema	Finance Minister
18	Puducherry	Shri K. Lakshminarayanan	Minister for Public Works
19	Rajasthan	Dr. Subhash Garg	State Minister for Technical Education (Independent Charge), Ayurveda & Indian Medicines (Independent Charge), Public Grievances & Redressal (Independent Charge), Minority Affairs, Waqf, Colonisation, Agriculture, Command Area Development & Water Utilisation
20	Sikkim	Shri B. S. Panth	Minister of Tourism & Civil Aviation and Commerce & Industries
21	Tamil Nadu	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resources Management
22	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs
23	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Finance

Annexure-2

List of Officers from Centre and the States/UTs who participated in the 49th Meeting of the GST Council held on 18th February, 2023

S.No.	Centre/States/Uts	Name of the Officer	Designation/Charge
1	Government of India	Shri Sanjay Malhotra	Revenue Secretary
2	Government of India	Shri Vivek Johri	Chairman, CBIC
3	Government of India	Shri Sanjay Kumar Agarwal	Member(Compliance Management),CBIC
4	Government of India	Ms. V Rama Mathew	Member (Tax Policy),CBIC
5	Government of India	Shri Shashank Priya	Member (GST),CBIC
6	Government of India	Shri Vivek Aggarwal	Additional Secretary (Revenue)
7	Government of India	Shri Pankaj Kumar Singh	Additional Secretary (GST Council Secretariat)
8	Government of India	Shri Ritvik Pandey	Joint Secretary
9	Government of India	Shri Sanjay Mangal	Principal Commissioner
10	GSTN	Shri Manish Kumar Sinha	CEO
11	GSTN	Shri Dheeraj Rastogi	EVP
12	Government of India	Dr. Amandeep Singh	Additional Director General(Audit)

13	Government of India	Ms. Ashima Bansal	Joint Secretary
14	Government of India	Ms. B.Sumidaa Devi	Joint Secretary
15	Government of India	Shri S.S. Nakul	PS to FM
16	Government of India	Shri Sernya Bhutia	1ST PA TO FM
17	Government of India	Shri Kumar Ravikant Singh	PS to MoS Finance
18	Government of India	Shri Dhruv Narayan Srivastav	1st PA to MoS Finance
19	Government of India	Shri Alkesh Uttam	Additional PS to MoS
20	Government of India	Shri Deepak Kapoor	OSD to Revenue Secretary
21	Government of India	Shri D. P. Misra	OSD to Chairman, CBIC
22	Government of India	Dr N Gandhi Kumar	Director (State Taxes)
23	Government of India	Shri Alok Kumar	Additional Commissioner
24	Government of India	Shri Pramod Kumar	Director
25	Government of India	Ms Puneeta Bedi	OSD
26	Government of India	Shri Rakesh Dahiya	Deputy Secretary
27	Government of India	Shri Nitesh Gupta	Deputy Commissioner

28	Government of India	Shri Amit Samdariya	Deputy Commissioner
29	Government of India	Ms. Neha Yadav	Deputy Commissioner
30	Government of India	Shri Sunil Kumar	Under Secretary
31	Government of India	Ms. Smita Roy	Technical Officer
32	Government of India	Shri Piyush Kumar Ankit	Technical Officer
33	Government of India	Shri Nitin Gupta	Technical Officer
34	Government of India	Shri Sandesh Lokhande	Technical Officer
35	GSTN	Ms Sanjali Dias	SVP
36	GSTN	Shri Naveen Agarwal	OSD to CEO
37	GSTN	Shri S Mohan	OSD to HR
38	GSTN	Shri Anil Chatwal	Chief Accountant
39	Government of India	Shri Rakesh Kumar Kapur	Consultant in DG(Audit)
40	GST Council Secretariat	Shri Kshitendra Verma	Director
41	GST Council Secretariat	Shri S.S.Shardool	Director
42	GST Council Secretariat	Shri Joginder Singh Mor	Under Secretary

43	GST Council Secretariat	Ms. Reshma R. Kurup	Under Secretary
44	GST Council Secretariat	Ms. Priya Sethi	Superintendent
45	GST Council Secretariat	Shri Dharambir	Superintendent
46	GST Council Secretariat	Shri Irfan Zakir	Superintendent
47	GST Council Secretariat	Shri Naveen Kumar	Superintendent
48	GST Council Secretariat	Shri Sachin Goel	Superintendent
49	GST Council Secretariat	Ms. Ambika Rani	Superintendent
50	GST Council Secretariat	Shri Niranjan Kishore	Superintendent
51	GST Council Secretariat	Shri Rakesh Joshi	Superintendent
52	GST Council Secretariat	Shri Vijay Malik	Inspector
53	GST Council Secretariat	Shri Padam Singh	Inspector
54	GST Council Secretariat	Shri Rohit Sharma	Inspector
55	GST Council Secretariat	Shri Ashwani Sharma	ASO
56	GST Council Secretariat	Shri Karan Arora	ASO
57	GST Council Secretariat	Shri Tarun	ASO

58	GST Council Secretariat	Shri Pankaj Dhaka	Tax Assistant
59	GST Council Secretariat	Shri Paresh Garg	Tax Assistant
60	GST Council Secretariat	Shri Shyam Bihari Meena	Tax Assistant
61	GST Council Secretariat	Shri Vikas Kumar	Tax Assistant
62	Andhra Pradesh	Shri N. Gulzar	Secretary Finance(CT)
63	Andhra Pradesh	Shri M. Girija Sankar	Chief Commissioner(ST)
64	Andhra Pradesh	Shri K. Ravi Sankar	Commissioner(ST) Policy
65	Arunachal Pradesh	Shri Nakut Padung	Superintendent (GST Cell)
66	Assam	Shri Rakesh Agarwalla	Principal Commissioner of State Tax
67	Bihar	Dr Pratima	Commissioner cum Secretary Commercial Taxes
68	Bihar	Shri Arun Kumar Mishra	Tax Expert Commercial Taxes
69	Bihar	Shri Binod Kumar Jha	Joint Commissioner State Tax
70	Bihar	Shri Naveen Kumar	PS to Hon'ble Minister
71	Chandigarh	Shri Vinay Pratap Singh	Deputy Commissioner-cum-Excise and Taxation Commissioner
72	Chandigarh	Ms Heena Talwar	Excise and Taxation Officer

73	Chhattisgarh	Shri Bhim Singh	Commissionerof State Tax
74	Chhattisgarh	Shri Tarun Kiran	Deputy Commissioner of State Tax
75	Chhattisgarh	Shri Anand Sagar	PS to Hon'ble Minister
76	Delhi	Dr. S. B. Deepak Kumar	Commissioner (State Tax)
77	Delhi	Shri. Awanish Kumar	Special Commissioner (State Tax)
78	Goa	Shri. S.S.Gill	Commissioner of State Tax
79	Goa	Smt. Sarita S. Gadgil	Additional Commissioner of State Tax
80	Gujarat	Shri. J.P. Gupta	Principal Secretary, Finance Department
81	Gujarat	Shri. Samir Vakil	Chief Commissioner of State Tax (I/c)
82	Gujarat	Shri Riddhesh Raval	Joint Commissioner
83	Haryana	Shri Ashok Kumar Meena	Excise & Taxation Commissioner-cum-Secretary to Government
84	Haryana	Shri Siddharth Jain	Additional Commissioner, GST, Excise and taxation Department
85	Himachal Pradesh	Shri Bharat Khera	Principal Secretary (Excise & Taxation)
86	Himachal Pradesh	Shri Yunus	Commissioner of State Tax and Excise
87	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise

88	Jammu and Kashmir	Dr. Rashmi Singh	Commissioner State Taxes
89	Jammu and Kashmir	Ms. Ankita Kar	Additional Commissioner State Taxes(Tax Planning, Policy and Advance Ruling)
90	Jammu and Kashmir	Ms. Namrita Dogra	Additional Commissioner State Taxes(Administration and Enforcement)
91	Jharkhand	Ms. Aradhana Patnaik	Principal Secretary (Commercial Tax)
92	Jharkhand	Shri Santosh Kumar Vatsa	Commissioner, Commercial Taxes
93	Karnataka	Ms. C. Shikha	Commissioner of Commercial Taxes
94	Karnataka	Dr. M.P. Ravi Prasad	Additional Commissioner of Commercial Taxes (P & L)
95	Kerala	Shri Ajit Patil	Commissioner of State Tax
96	Kerala	Shri. Abraham Renn S	Additional Commissioner-1
97	Kerala	Dr. Shyjan D	PS to Hon'ble Minister for Finance
98	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner, State Tax
99	Madhya Pradesh	Ms Tanvi Hooda	Special Commissioner, State Tax
100	Madhya Pradesh	Shri Manoj Kumar Choubey	Joint Commissioner, State Tax
101	Madhya Pradesh	Shri Harish Jain	Assistant Commissioner, State Tax

102	Madhya Pradesh	Shri Dileep Raj Dwivedi	OSD to Hon'ble Minister
103	Maharashtra	Ms Shaila A	Principal Secretary (Financial Reforms)
104	Maharashtra	Shri Rajeev Mital	Commissioner of State Tax
105	Manipur	Shri Y. Indrakumar Singh	Assistant Commissioner of Taxes
106	Meghalaya	Ms Isawanda Laloo	Commissioner of Taxes
107	Meghalaya	Shri. L Khongsit	Additional Commissioner of Taxes
108	Meghalaya	Shri. V R Challam	Assistant Commissioner of Taxes
109	Mizoram	Shri Kailiana Ralte	Commissioner of State Tax
110	Mizoram	Shri R. Zosiamliana	Additional Commissioner of State Taxes
111	Nagaland	Shri. C Lima Imsong	Additional Commissioner of State Taxes
112	Odisha	Shri Vishal Kumar Dev	Principal Secretary, Finance Department
113	Odisha	Shri Nihar Ranjan Nayak	Additional Commissioner of Taxes
114	Punjab	Shri Vikas Partap	Financial Commissioner (Taxation)
115	Punjab	Shri Kamal Kishor Yadav	Commissioner of State Taxes
116	Punjab	Shri Ravneet Khurana	Additional Commissioner of State Taxes (Audit)

117	Puducherry	Shri. M. Raje Saker	Commissioner of State Tax
118	Puducherry	Shri. S. Saravana Kumar	Commercial Tax Officer
119	Rajasthan	Dr Ravi Kumar Surpur	Chief Commissioner, State Tax
120	Rajasthan	Shri Arvind Mishra	Advisor (Additional Commissioner, GST)
121	Sikkim	Shri Manoj Rai	Commissioner (Commercial Taxes)
122	Sikkim	Shri Ajay Raj Gurung	Deputy Commissioner (Commercial Taxes)
123	Tamil Nadu	Thiru N. Muruganandam	Additional Chief Secretary to Government, Finance Department
124	Tamil Nadu	Thiru Dheeraj Kumar	Principal Secretary/Commissioner of Commercial Taxes
125	Tamil Nadu	Thiru K.Gnanasekaran	Senior Additional Commissioner, Commercial Taxes
126	Telangana	Shri Ronald Ross	Special Secretary (Finance)
127	Telangana	Ms Neetu Prasad	Commissioner of Commercial Taxes
128	Telangana	Shri N Sai Kishore	Additional Commissioner (ST)(Legal)
129	Telangana	Ms. K Rupa Sowmya	Deputy Commissioner (ST) EIU
130	Tripura	Shri Brijesh Pandey	Secretary, Finance
131	Tripura	Ms. Rakhi Biswas	Chief Commissioner of State Tax

132	Tripura	Mr. Ashin Barman	State Admin GST
133	Uttarakhand	Dr. Ahmad Iqbal	Commissioner of State Tax
134	Uttarakhand	Shri Anil Singh	Additional Commissioner of State Tax
135	Uttarakhand	Shri Anurag Mishra	Joint Commissioner of State Tax
136	Uttar Pradesh	Shri Nitin Ramesh Gokaran	Principal Secretary, State Tax
137	Uttar Pradesh	Ms. Ministhy S	Commissioner of State Tax
138	Uttar Pradesh	Shri Paritosh Kumar Mishra	Deputy Commissioner(GST), State Tax HQ
139	Uttar Pradesh	Shri Amit Pandey	P.S. to Hon'ble Finance Minister, UP
140	West Bengal	Dr Manoj Pant	Additional Chief Secretary, Finance Department
141	West Bengal	Shri Khalid Aizaz Anwar	Commissioner of State Tax
142	West Bengal	Shri Rajib Sankar Sengupta	Senior Joint Commissioner of Revenue
143	West Bengal	Shri Shantanu Naha	OSD to Hon'ble Minister

ANNEXURE-3

Purpose of GoM

NATION TAX MARKET

As per 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)

Hon'ble High Court of Madras in its order dated 20.09.2019 in WP 21147 of 2018 – Revenue Bar Association Vs. Union of India

The number of expert members cannot exceed the number of judicial members on the bench and struck down the relevant provisions of the law.

Hon'ble Supreme Court of India

Laid down various principles with respect to appointment to Tribunals, conditions of service etc. in various other judgements, including order of Supreme Court in CA 3067 of 2004, CA No. 8588 of 2019

Group of Ministers(GoM)

Draft amendments were placed before the GST Council in its 47th Meeting held on 28-29 June 2022 in Chandigarh and the matter referred to a Group of Ministers.

GoM was mandated to recommend necessary amendments required in the GST Laws to ensure that the legal provisions:

a) Maintain the right federal balance;
b) Are in line with the overall objective of uniform taxation within the country; and
c) Are in line with the principles outlined in various judgements of Courts in relation to various aspects of Tribunal and are legally sustainable.

Members of GOM

Name	Designation & State	
Sh.Dushyant Chautala	Deputy Chief Minister, Haryana	Convenor
Sh.Buggana Rajendranath	Finance, Planning, Commercial Taxes, Skill Development & Training and Legislative Affairs Minister, Andhra Pradesh	Member
Sh.Mauvin Godinho	Transport, Industries, Panchayat and Protocol Minister, Goa	Member
Sh.Niranjan Pujari	Finance and Parliamentary Affairs Minister, Odisha	Member
Sh.Shanti Kumar Dhariwal	Local Self Government, Urban Development and Housing, Law & Legal Affairs and Legal Consultancy Office, Parliamentary Affairs Department Minister, Rajasthan	Member
Sh.Suresh Kumar Khanna	Finance and Parliamentary Affairs Minister, Uttar Pradesh	Member

Meetings of the GoM

1. **26th July 2022 (Hybrid mode)**

GoM considered the original draft discussed in the 47th meeting of the GST Council

Took note of various judgments of Hon'ble Supreme Court including order of Supreme Court in CA 3067 of 2004 – R Gandhi Vs. Union of India, CA No. 8588 of 2019 – Rojer Mathews Vs. Union of India, WP (C) 804 of 2020 – Madras Bar Association Vs. Union of India

Took note of the Tribunal Reforms Act, 2021 passed by the Parliament, provisions of which govern the appointment of Members and Chairpersons of various Tribunals and their terms and conditions

2. **17th August 2022 in Bhubaneswar (Physical meeting)**

To discuss the issues and finalize the recommendations.

Recommendation 1/5 : One National GST Tribunal with Benches in every State

- **Cooperative Federalism**: The GST legal framework has been designed in the spirit of cooperative federalism and the CGST/SGST Acts are pari materia in nature. In the same spirit, the GoM envisaged having one National tribunal with Benches in every State with **One Nation. One Tax. One Tribunal.**
- **Interest of the taxpayer :** The Goods and Services Tax was introduced in the country to have one common indirect tax law in the country. The GoM discussed that constitution of State level Tribunals may lead to divergent rulings as experienced in AAR / AAAR (Advance Ruling Authority) which has created a lot of confusion for taxpayers on key issues. Therefore, from a taxpayer perspective one National Tribunal with coordinate benches will be the first common forum at which the dispute process converges for both the Acts and tax administrations.
- **Earlier discussion of the GST Council:** Even earlier the matter of National Vs. State Bench was discussed in the GST Council and the Council opted in favour of a National Bench with State / Coordinate Benches.
- **Persuasive value of State Benches** : The Council in its 7th meeting had considered that creation of coordinate / State benches whose judgments would have persuasive value for each other and this would help settle the jurisprudence faster. It is noteworthy that independent State Tribunals with divergent ruling will increase litigation in the long run.
- Members from Uttar Pradesh and Rajasthan requested for separate National Tribunal and State Tribunal and their views were recorded accordingly.

Recommendation 2/5 (A) : Composition of the Search-cum-Selection Committee (ScSc)

- **Judgement of the Supreme Court** : The GoM took note of the decision of the Hon'ble Supreme Court of India in Madras Bar Association (2020) case and noted that in view of the judgement of the Hon'ble Supreme Court it would be most tenable that the Tribunal be chaired by the Chief Justice of India or a Judge of Supreme Court nominated by him and the President of the Tribunal and two officers as members of ScSC.
- **Question of different ScSC:** Many States had proposed different ScSC for Technical Member (State) headed by the respective Chief Justice of High Court of the State. However, the GoM noted that since all Members are equal in terms of roles and responsibilities, **they should go through the same selection and appointment process.**

Recommendation 2/5 (B) : Composition of the Search-cum-Selection Committee

Chairperson	**Chief Justice of India or a Judge of Supreme Court Nominated by Him**
Member	the President of the Tribunal (or a retired Judge of Supreme Court or Chief Justice of High Court nominated by Chief Justice of India if the President is not available)
Member	One Secretary of Central Government

Member for Selection of Technical Member (Centre) and Judicial Member	**Member for Selection of Technical Member (State)**
Chief Secretary of a State to be nominated by Council for a period of one year.	Chief Secretary of the State in which the bench is located

Recommendation 3/5 : Composition of Benches

- **Composition :** The bench should consist of one Judicial and one Technical Member. The Technical Member should be a Technical Member (Centre) or a Technical Member (State) in a 50:50 ratio in every State.
- **In case difference of opinion** : In cases where there is a difference of opinion between two members, the President may add a third Member from another bench in the same State. If a Member in that State is not available, the same could be taken from a bench in another State.
- **Provision of Single Member Bench** : Single Member bench should be empowered to hear cases with tax implication upto ₹ 50 lakh, where no question of law is involved.

Recommendation 4/5 : Qualification of Members

President	**Judge of the Supreme Court (Retd.) or Chief Justice of High Court (Retd.)**
Judicial Member	Judge of a High Court (Retd.) or District Judge or an Additional District Judge (With 10 years experience)
Technical Member (Centre)	Min. 25 years of Group A Service + Member of IRS (C&CE) or AIS with three-year experience in GST or existing law
Technical Member (State)	Min. 25 years of Government Service ✚ Officer of the State Government or AIS + Rank Higher than the First Appellate Authority of the State ✚ 25 Years of Group A Services which may be reduced by the State Government on recommendation of the Council.

Recommendation 5/5 : Retirement Age & Number of Benches

- **Retirement age of Members** : President and Members should have retirement age of 67 and 65 years respectively and have term of four years with provision for re-appointment for another two years.
- **Number of Benches in each State** : States with less than 5 crore population should have maximum 2 benches and no State should have more than 5 benches (Recommendatory).

Suggestions from officer's in 48th GST Council meeting

- **Not lower than First Appellate Authority**: Currently, the recommendations provide for Technical Member (State) to be higher than the First Appellate Authority in a State but in many States the First Apellate Authority may be of the rank of Additional Commissioner therefore the rank higher than that would be the Commissioner of State Tax itself. Therefore, the wording should be rank not lower than the First Appellate Authority.
- **Group A or equivalent** : Few States represented that they do not have a notified / recognized Group A service, then in such cases, they may have Class 1 etc. or a different nomenclature. Therefore, for the qualification of Technical Member (State) the officer should have requisite experience in **Group A or equivalent.**

ANNEXURE-4


Presentation on issues pertaining to GST law and procedures
49th Meeting of GST Council
18th February 2023
NEW DELHI
ONE NATION TAX MARKET

Summary of discussions on Agenda 4 in Officers' Meeting held on 17th February 2023

Agenda No	Issue/Proposal	Status during Officers Meeting
4(i) [Vol 1-Pg 134-135]	**Amendment in Section 23 of CGST Act, 2017** ▪ the proposed amendment in section 23 of CGST Act may be limited to giving over-riding effect to only sub-section (2) of section 23 over sub-section (1) of section 22 and section 24 of CGST Act ▪ amendment may be made in Finance Bill, 2023 accordingly.	Agreed
4(ii) [Vol 1-Pg 136-138]	**Amendment to Section 62 of CGST Act, 2017** ▪ amendment may be made in section 62 of CGST Act, 2017 ➢ to increase the time period of 30 days specified under section 62(2) to 60 days. ➢ to insert a proviso to section 62(2) to provide that assessment order shall also be deemed to have been withdrawn if the concerned returns are filed beyond the period of 60 days, but within an additional period of 60 days, with an additional late fee of Rs. 100 per day during this additional period of 60 days.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
4(ii) [Vol 1-Pg 136-138]	▪ an amnesty scheme may be provided through a notification under section 148 of CGST Act for conditional deemed withdrawal of assessment orders for past cases where the concerned returns could not be filed within 30 days of the assessment order but have been filed along with due interest and late fee upto a specified date, irrespective of whether appeal has been filed or not against the assessment order, or whether the said appeal has been decided or not. ▪ The specified date to be finalized in consultation with GSTN, based on system readiness on the portal.	
4(iii) [Vol 1-Pg 139-140]	**Change in Place of Supply of transportation of goods under Section 13(9) of IGST Act, 2017** ▪ Section 13(9) of the IGST Act may be deleted to change the place of supply of services of transportation of goods, in cases where location of supplier or location of recipient is outside India, from 'destination of goods' to the default rule under section 13(2) of IGST Act, i.e. 'location of the recipient' of services.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
4(iv) [Vol 1-Pg 141-147]	**Rationalisation of late fee for FORM GSTR-9 and amnesty for non-filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10** ▪ **Rationalisation of late fee for FORM GSTR-9 as under:** S. No. | Class of registered persons | Amount of late fee(under CGST Act)* 1. | Registered persons having an aggregate turnover of up to rupees 5 crores in the said financial year | Twenty-five rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of his turnover in the State or Union territory. 2. | Registered persons having an aggregate turnover of more than rupees 5 crores and up to rupees 20 crores in the said financial year | Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of his turnover in the State or Union territory. *Similar late fee will also be applicable under SGST/ UTGST Act ▪ **Amnesty for non-filers of FORM GSTR-4 as under:** ➢late fee may be waived which is in excess of Rs. 500/- (Rs. 250/- under CGST and Rs. 250/- under SGST) and may be fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who failed to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for FY from 2019-20 to 2021-22, by the due date but furnish the said return between 01.05.2023 to 31.07.2023.	Agreed. While agreeing with the proposal, Rajasthan requested that amnesty scheme may also be provided for GSTR-1 & GSTR-3B. However, it was agreed that a number of amnesty schemes have already been brought for GSTR-1 and GSTR-3B earlier, and there is no need for such amnesty for GSTR-1 and GSTR-3B now.

Agenda No	Issue/Proposal	Status during Officers Meeting
4(iv) [Vol 1-Pg. 141-147]	▪ **Amnesty for non-filers of FORM GSTR-9** ➢late fee may be waived which is in excess of Rs. 20,000/- (Rs. 10,000/- under CGST and Rs. 10,000/- under SGST / UTGST) for the registered persons who failed to furnish the annual return under section 44 of CGST Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between 01.05.2023 to 31.07.2023. ▪ **Amnesty for non-filers of FORM GSTR-10** ➢late fee may be waived which is in excess of Rs. 1000/- (Rs. 500/- under CGST and Rs. 500/- under SGST) for the registered persons who failed to furnish the final return in FORM GSTR-10 by the due date but furnish the said return between 01.05.2023 to 31.07.2023. ▪ Final time period for filing of the returns under these amnesty schemes to be decided in consultation with GSTN, based on system readiness on the portal for the same.	
4(v) [Vol 1-Pg. 148-152]	**Amendment in CGST Rules and Notification for biometric-based Aadhaar authentication of registration applicants** ▪ rule 8 of CGST Rules may be amended with effect from 26.12.2022: ➢substitution of sub-rule (4A) of rule 8; and ➢amendment of sub-rule (4B) of rule 8 ▪ amendment may be made in notification no. 27/2022-CT dated 26.12.2022 with effect from 26.12.2022.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
4(vi) [Vol 1-Pg. 153-156]	**Extension of time limit for application for revocation of cancellation of registration** ▪ time limit for making an application for revocation of cancellation of registration may be raised from 30 days to 90 days. ▪ where the registered person fails to apply for such revocation within 90 days, the said time period may be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of an Additional / Joint Commissioner, on sufficient cause being shown, and for reasons to be recorded in writing, for a further period not exceeding 180 days. ▪ timelines for filing of application for revocation and extension thereof may not be hard-coded in the Act and instead, may be prescribed through the Rules. ▪ amendments may be carried out in sub-section (1) of section 30 of the CGST Act and sub-rule (1) of rule 23 of the CGST Rules accordingly. ▪ notification may be issued under section 148 of CGST for providing an amnesty in the past cases where registrations have been cancelled upto 31st December, 2022, by conditionally allowing such persons to file application for revocation of cancellation of registration by 30th June, 2023. ▪ Final dates for this amnesty scheme to be decided in consultation with GSTN, based on system readiness on the portal for the same.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
4(vii) [Vol 2-Pg 07-09]	**Extension of time limit under sub-section (10) of section 73 of CGST Act for FY 2017-18, 2018-19 and 2019-20** ▪ Considering the delay in scrutiny, audit and assessment process for the FY 2017-18, 2018-19 and 2019-20 due to restrictions and difficulties faced in COVID-19 period, there may be a need to provide some additional time under section 73(10) for the said financial years in such a manner so that there is no bunching of last dates for issuance of SCN/order under section 73 for these financial years as well as for the subsequent financial years. ▪ The time limit under section 73(10) of CGST Act for the FY 2017-18, FY 2018-19 and FY 2019-20 may be extended as below, by issuance of a notification under section 168A of CGST Act: ➢ For FY 2017-18, the time limit may be extended from the present 30th September 2023 to 31st December 2023; ➢ For FY 2018-19, the time limit may be extended from the present 31st December 2023 to 31st March 2024 ➢ For FY 2019-20, the time limit may be extended from the present 31st March 2024 to 30th June 2024	Agreed. One view was that already the extension in time limit to issue SCN/orders under section 73(10) has been provided for FY 2017-18. Extending the timelines further will not extend any tangible benefit. On the other hand, this will be perceived as adversarial for taxpayers and and therefore, the said extension of time limit under section 73(10) may not be provided.

Ratification of Notifications and Circulars

Agenda 3: Ratification of Notifications, Circulars etc.

[Vol 1- Pg. 131-133]

Act/Rules	Notifications/Circulars Nos	Description/Remarks
CGST Act/ CGST Rules	**Two (02) Central Tax Notifications** issued (No. 26/2022 and 27/2022) & **Four (04) Central Tax (rate) Notifications** issued (No. 12/2022 to 15/2022)	**Amendments to CGST Rules carried out and** notifications issued to implement various decisions of GST Council taken in 48th meeting. **Some of the important amendments are**: i. amendments have been made in Rule 8 and Rule 9 of CGST Rules, 2017 dealing with the procedure of seeking registration ii. amendments have been made in Rule 12 of CGST Rules, 2017 to the effect that the person having TDS/TCS registration can also make a request for cancellation of such registration. iii. Rule 88C inserted in CGST Rules, 2017 prescribing manner of dealing with difference in liability reported in statement of outward supplies and that reported in return iv. Rule 109C has been inserted in CGST Rules, 2017 to permit the withdrawal of appeal, before the issuance of the order or SCN, by filing the application in FORM GST APL-01/03W. v. Form APL-01/03W (Application for Withdrawal of Appeal Application) has been prescribed for filing an application for the withdrawal of the appeal. vi. Form DRC-01 has been prescribed in view of the newly inserted Rule 88C for communicating the discrepancy between GSTR 1 and GSTR 3B (Part A) and filing the reply by the taxpayer (Part B).
UTGST Act	**Four (04) Union Territory Tax (rate) Notifications** issued (No. 12/2022 to 15/2022)	Notifications to implement various decisions of GST Council taken in 48th meeting

Agenda 3: Ratification of Notifications and Circulars

[Vol 1- Pg. 131-133]

Act/Rules	Notifications/Circulars Nos	Description/Remarks
IGST Act	**Four (04) Integrated Tax (rate) Notifications** issued (No. 12/2022 to 15/2022)	Notifications to implement various decisions of GST Council taken in its 48th meeting
Circulars	**Eight (08) Circulars** issued (No. 183/15/2022-GST dated 27.12.2022 to 190/02/2023-GST dated 13.01.2023)	Circulars to implement various decisions of GST Council in its 48th meeting. **Some of the important issues in the circulars are**: i. Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 ii. Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017 iii. Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation iv. Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016 v. Prescribing manner of filing an application for refund by unregistered persons vi. Clarification regarding GST rates and classification of certain goods vii. Clarification regarding GST rates and classification of certain services.

- In addition, GIC, by circulation, approved sharing of aggregated GST Data with Department of Telecommunication, Ministry of Communications in respect of certain HSNs pertaining to telecom equipment *(Agenda 13, vol-2, page 11)*

Recommendations of the Law Committee

Law Committee Recommendations for Trade facilitation and Reducing litigation

Agenda 4(ii): Amendment to Section 62 of CGST Act, 2017 (1/2)

[Vol 1- Pg. 136-138]

Issue:

- **Section 62(2)** of CGST Act provides that the best judgment assessment order issued under section 62(1) shall be **deemed to be withdrawn** if the relevant return under section 39 or section 45 is **filed within 30 days** of service of the said assessment order.
- In a number of cases, the registered person furnishes the said return **after period of 30 days** of service of the assessment order.
  - In such cases, the assessment order and the liability created by such order are not deemed to be withdrawn and remain valid.
  - Such liabilities remain as recoverable arrears in the books of the tax authorities and are liable to be recovered, despite the return for the said tax period already having been filed.
  - The only option available with the registered person in such cases is to file appeal against the said assessment order under section 107 of CGST Act.
- Representations have been received from various stakeholders to **increase this time period of 30 days** specified in Section 62(2) of CGST Act.

Agenda 4(ii): Amendment to Section 62 of CGST Act, 2017 (2/2)

[Vol 1- Pg. 136-138]

Proposal:

- LC has recommended -
  - **amendment in section 62** of CGST Act, 2017
    - to **increase the time period** of 30 days specified under section 62(2) to **60 days**.
    - to **insert a proviso to section 62(2)** to provide that assessment order shall also be deemed to have been withdrawn if the concerned returns are filed beyond the period of 60 days, but within an **additional period of 60 days**, with an **additional late fee** of Rs. 100 per day during this additional period of 60 days.
  - an **amnesty scheme** may be provided through a **notification under section 148** of CGST Act for conditional deemed withdrawal of assessment orders for past cases where the concerned returns could not be filed within 30 days of the assessment order but have been filed along with due interest and late fee upto a specified date, irrespective of whether appeal has been filed or not against the assessment order, or whether the said appeal has been decided or not.
- The dates for implementation of amnesty scheme to be finalized in consultation with GSTN, based on readiness of the system.

➢ **This will not only provide relief to the registered persons who could not file their returns within the time specified in section 62(2) of CGST Act in the past, but will also provide additional time in future for filing return subsequent to such assessment order.**

➢ **This will also help in reducing the multiplicity of cases at appellate level.**

Agenda 4(iv): Rationalisation of Late fee for FORM GSTR-9 and Amnesty for non-filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10 (1/2)

[Vol 1- Pg. 141-147]

Issue:

- Representations have been received that many taxpayers, especially MSMEs, are not able to file their pending returns such as **GSTR-4, GSTR-9 and GSTR-10, due to high burden of late fee**
  - This is not only adversely impacting these taxpayers but is also in not in interest of tax administration due to implications on revenue as well as on compliance discipline.
- The late fee for delayed filing of GSTR-1, GSTR-3B, GSTR-4 and GSTR-7 were rationalised, however, **no such rationalisation of late fee was done for delayed filing of Annual Return** in FORM GSTR-9. Representations have been received for rationalisation of the same.

Proposal:

- LC has recommended for **Rationalisation of late fee for FORM GSTR-9, for FY 2022-23 onwards** as below:

S. No.	Class of registered persons	Amount of late fee (under CGST Act)*
1.	Registered persons having an aggregate turnover of **up to rupees 5 crores** in the said financial year	**Twenty-five rupees per day**, subject to a maximum of an amount calculated at **0.02 per cent. of his turnover** in the State or Union territory.
2.	Registered persons having an aggregate turnover of **more than rupees 5 crores and up to rupees 20 crores** in the said financial year	**Fifty rupees per day**, subject to a maximum of an amount calculated at **0.02 per cent. of his turnover** in the State or Union territory.

* Similar late fee will also be applicable under SGST/ UTGST Act

Agenda 4(iv): Rationalisation of Late fee for FORM GSTR-9 and Amnesty for non-filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10 (2/2)

[Vol 1- Pg. 141-147]

- LC has also recommended:
  - **Amnesty for non-filers of FORM GSTR-4**
    - late fee may be waived which is in excess of Rs. 500/- (Rs. 250/- under CGST and Rs. 250/- under SGST) and may be fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who failed to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for FY from 2019-20 to 2021-22, by the due date but furnish the said return between 01.05.2023 to 31.07.2023.
  - **Amnesty for non-filers of FORM GSTR-9**
    - late fee may be waived which is in excess of Rs. 20,000/- (Rs. 10,000/- under CGST and Rs. 10,000/- under SGST / UTGST) for the registered persons who failed to furnish the annual return by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between 01.05.2023 to 31.07.2023.
  - **Amnesty for non-filers of FORM GSTR-10**
    - late fee may be waived which is in excess of Rs. 1000/- (Rs. 500/- under CGST and Rs. 500/- under SGST) for the registered persons who failed to furnish the final return in FORM GSTR-10 by the due date but furnish the said return between 01.05.2023 to 31.07.2023.
- Final time period for filing of the returns under this amnesty scheme **to be decided in consultation with GSTN**, based on system readiness on the portal for the same.

➢ **This will provide an opportunity to taxpayers, specially smaller taxpayers, who could not file pending returns, to furnish their pending returns with reduced burden of late fee and regularise their businesses.**

Agenda 4(vi): Extension of time limit for application for revocation of cancellation of registration (1/2) [Vol 1- Pg. 153-156]

Issue:

- Representations have been received that the time period of 30 days specified in **section 30(1)** of CGST Act to **apply for revocation of cancellation** of registration is not sufficient, especially in cases where the registration is cancelled for non-filing of returns.
- Further, multi-stage extension of time period to file application for revocation of cancellation of registration by 30 and 60 days by senior officers, as per **proviso to section 30(1)** of CGST, causes delay in processing applications for revocation.
- It has, therefore, been requested to **extend this time line** for applying for revocation of cancellation of registration.
- A large number of small taxpayers could not apply within the specified time for revocation of cancellation of registration due to lack of funds or other reasons, adversely affecting business and there may be a need to bring them again in mainstream by giving a chance to revive their registrations.

Agenda 4(vi): Extension of time limit for application for revocation of cancellation of registration (2/2) [Vol 1- Pg. 153-156]

Proposal:

- LC has recommended that -
  - time limit for making an application for revocation of cancellation of registration may be raised from 30 days to **90 days**.
  - where the registered person fails to apply for such revocation within 90 days, the said time period may be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of an Additional / Joint Commissioner, on sufficient cause being shown, and for reasons to be recorded in writing, for a **further period not exceeding 180 days**.
  - timelines for filing of application for revocation and extension thereof may not be hard-coded in the Act and instead, **may be prescribed through the Rules**.
    - **amendments may be carried out in sub-section (1) of section 30 of the CGST Act and sub-rule (1) of rule 23 of the CGST Rules accordingly**.
  - **notification may be issued under section 148 of CGST** for providing an amnesty in the past cases where registrations have been cancelled on account of non-filing of returns, by allowing such persons to file application for revocation of cancellation of registration by a specified date.
- The dates for amnesty scheme to be finalized in consultation with GSTN, based on readiness of the system.

➢ **This would provide relief to taxpayers, specially MSMEs, whose registrations were cancelled in past and who could not file application for revocation within the time, by giving them opportunity to file such application now, and will also provide additional time for filing such application for revocation of cancellation of registration in future.**

Agenda 4(iii): Change in Place of Supply of transportation of goods under Section 13(9) of IGST Act, 2017

[Vol 1- Pg. 139-140]

Issue:

- Representations has been received that while export freight charged by Indian Shipping Line (ISL) to Indian exporter is taxable, the same charged by Foreign Shipping Line (FSL) is not taxable.
- In case of supply of goods transportation services provided by a FSL to the Indian exporter for transportation of goods from India to outside India, as per provision of section 13(9) of IGST Act, Place of Supply (PoS) is outside India, and therefore, the same does not constitute import of service. It is neither inter-state supply nor intra-state supply in terms of IGST law and is thus outside tax net.
  - As a result, Indian exporters would prefer FSL over ISL.
- Similar disparity exists in case of import freight service supplied to foreign consignors.
- Place of supply of services of transportation of goods in cases where supplier as well as recipient of services are located in India, and destination of goods is outside India, has already been rationalized by proposed amendment in section 12(8) of IGST Act as per recommendations of the Council in 48th meeting.

Proposal:

- LC has recommended
  - Section 13(9) of the IGST Act may be amended to change the place of supply of transportation of goods from 'destination of goods' to the default rule under section 13(2) of IGST Act, i.e. 'location of the recipient' of services.

➢ **This would rationalize the provision of place of supply for services of transportation of goods and would ensure that both Indian Shipping Lines and Foreign Shipping Lines have identical liability to pay or to not pay IGST on transportation of goods by vessel from India to outside India and vice versa.**

Law Committee Recommendations relating to streamlining compliances

Agenda 4(i): Amendment in Section 23 of CGST Act, 2017

[Vol 1- Pg. 134-135]

- On the recommendation of the GST Council in its **48th meeting**, amendment has been proposed in **section 23** of CGST Act retrospectively w.e.f. 01.07.2017 vide **clause 131 of Finance Bill, 2023** to provide **overriding effect** to the section 23 over sub-section (1) of section 22 and section 24 of CGST Act.
  - This was proposed mainly to overcome the requirement of mandatory registration in respect of small suppliers, with turnover less than the threshold, making intra-State supply of goods through ECOs.
- During the post-Budget interactions with stakeholders, it has been noticed that after the proposed amendment in section 23 of CGST Act, a person dealing exclusively in exempt goods and/or services will no longer be required to obtain mandatory registration under the Act even if he is liable to pay tax under reverse charge on some supply of goods or services received by him, which was never the intention behind the said amendment.

Proposal:

- LC has recommended that
  - the proposed amendment in section 23 of CGST Act be limited to giving over-riding effect to sub-section (2) of section 23 over sub-section (1) of section 22 and section 24 of CGST Act
  - Amendment may be made in Finance Bill, 2023 accordingly.

➢ **This would remove the unintended anomaly emerged due to amendment in section 23 proposed in Finance Bill, 2023 and will ensure that amended section 23 does not exempt the person dealing exclusively in exempt goods and/or services from obtaining registration if he is liable to pay tax under reverse charge on some supply of goods or services received by him.**

Agenda 4(v): Amendment in CGST Rules and Notification for biometric-based Aadhaar authentication of registration applicants (1/2)

[Vol 1- Pg. 148-152]

Issue:

- **Rule 8 and Rule 9 of CGST Rules** have been amended w.e.f. 26.12.2022 vide Notification No. **26/2022-CT dated 26.12.2022** based on the recommendations of the GST Council made in **48th meeting**, inter alia, to mandate biometric-based Aadhaar authentication for high-risk applicants who opt for authentication of Aadhaar number and to provide for exemption from biometric-based Aadhaar authentication in states / UTs, other than State of Gujarat.
- However, **due to substitution of sub-rule (4A)** vide Notification No. 26/2022-CT dated 26.12.2022, inadvertently,
  - the **mandate to undergo authentication of Aadhaar number** while submitting the application under sub-rule (4) of rule 8 by an applicant, other than a person notified under sub-section (6D) of section 25, who opts for authentication of Aadhaar number, **has been done away with**;
  - the provision that the **date of submission of the application** in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier, **has also been omitted**.

Agenda 4(v): Amendment in CGST Rules and Notification for biometric-based Aadhaar authentication of registration applicants (2/2)

[Vol 1- Pg. 148-152]

- Since Notification No. **27/2022-CT dated 26.12.2022** issued under Rule 8(4B) of CGST Rules specifies that the provisions of sub-rule (4A) of rule 8 shall not apply in all the States and Union territories except the State of Gujarat, it emerges that **there does not remain any requirement of Aadhaar authentication in all the States and Union territories other than Gujarat**.

Proposal

- **LC recommended that to correct the said inadvertent implication,**
  - **rule 8 of CGST Rules** may be amended **with effect from 26.12.2022**:
    - substitution of sub-rule (4A) of rule 8; and
    - amendment of sub-rule (4B) of rule 8
  - **amendment may be made in notification no. 27/2022-CT** dated 26.12.2022 **with effect from 26.12.2022**.
- **This would rectify the inadvertent omission of the mandate to undergo authentication of Aadhaar number by a person applying for registration.**

Agenda 4(vii): Extension of time limit under sub-section (10) of section 73 of CGST Act for FY 2017-18, 2018-19 and 2019-20 (1/2)

[Vol 2- Pg. 07-09]

Issue:

- Representations have been received from some tax administrations that -
  - difficulties were faced by government departments during the COVID period due to reduced staff and exemption to certain categories of employees from attending offices etc, resulting in delay in audit and scrutiny process.
  - though the time period for issuance of show cause notice and demand orders for FY 2017-18 has been extended vide Notification No. 13/2022- Central Tax dated 05.07.2022 based on recommendations of the Council made in 47th meeting, however, the same is not sufficient considering the delay in scrutiny and audit process due to COVID.
- It has been represented to either **extend the timelines under sub-section (10) of section 73 of the CGST Act for FY 2017-18, 2018-19 and 2019-20** to 31.12.2024 or to extend the timelines under section 73 to those under section 74 of the CGST Act.

Deliberations by LC:

- LC took the view that it may not be desirable to extend the timelines in such a manner so that it may lead to bunching of last date of issuance of SCN/ order under section 73 and section 74 for a number of financial years.
  - LC did not agree with the proposal to extend timelines under section 73(10) of CGST Act to the timelines under section 74 of CGST Act for any financial year.
  - LC also did not agree with the proposal to extend the timelines for the FY 2017-18, 2018-19 and 2019-20 to 31.12.2024.

Agenda 4(vii): Extension of time limit under sub-section (10) of section 73 of CGST Act for FY 2017-18, 2018-19 and 2019-20 (2/2)

[Vol 2- Pg. 07-09]

- However, LC felt that considering the delay in scrutiny, audit and assessment process for the FY 2017-18, 2018-19 and 2019-20 due to restrictions and difficulties faced in COVID-19 period, there may be a need to provide some additional time under section 73(10) for the said financial years in such a manner so that there is no bunching of last dates for issuance of SCN/order under section 73 for these financial years as well as for the subsequent financial years.

Proposal:

- LC recommended that the **time limit under section 73(10) of CGST Act for the FY 2017-18, 2018-19 and 2019-20 may be extended as below**, by issuance of a notification under **section 168A** of CGST Act:
  - For **FY 2017-18**, the time limit under section 73(10) may be extended from the present 30th September 2023 to **31st December 2023**;
  - For **FY 2018-19**, the time limit under section 73(10) may be extended from the present 31st December 2023 to **31st March 2024**
  - For **FY 2019-20**, the time limit under section 73(10) may be extended from the present 31st March 2024 to **30th June 2024**

➢ **This would provide additional time to tax administration for issuance of demand notices and passing orders in respect of cases detected during scrutiny and audit, considering the delay in scrutiny and audit process due to COVID.**

THANK YOU

ANNEXURE-5

49th GST Council Meeting

Agenda item 5

Recommendations of Fitment Committee on Goods and Services

18th February, 2023

1

Summary of Discussion in Officers' meeting on Recommendations of Fitment Committee

2

Goods-Changes Recommended (5):

Agenda No.	Issue/Proposal	Status after officers' meeting
5 (Annexure-I) S.No. 1 Page No. 157	➢ GST rate on rab may be reduced from 18% to 5% (if sold in pre-packaged and labelled form) and NIL (if sold in loose form) , in same line as is available to jaggery. ➢ Past practice may be regularised on *as is* basis.	Agreed
5 (Annexure-I) S.No. 2 Page No. 158-160	➢ GST rate on Pencil Sharpeners (HSN 8214) may be reduced from 18% to 12%.	Agreed

Agenda No.	Issue/Proposal	Status after officers' meeting
5 (Annexure-I) S.No. 3 Page No. 160	➢ To insert a proviso in the notification No. 104/94-Customs dated 16.03.94 that if tracking device is already affixed on container, no separate IGST shall be levied on such affixed device and the 'Nil' IGST treatment available for the container under above notification shall also be available subject to existing conditions. ➢ However, such tracking devices imported separately for affixing on the containers, shall attract applicable IGST	Agreed
5 (Annexure-I) S.No. 4 Page No. 161	➢ To amend the entry 41 A in Compensation cess notification to cover *coal rejects* supplied to and by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has been availed by any person.	Agreed

Agenda No.	Issue/Proposal	Status after officers' meeting
5 (Annexure-I) S.No. 5 Page No. 161-162	➢ GST rate on millet-based health mix consisting at least 70% of millets may be reduced from 18% to nil if it is sold in loose form or 5%, if it is sold in pre-packaged and labelled form. ➢ The goods may be classified under HS 1901 or 2106 depending on the substances added to the millet flour.	• It was opined that – ➢ the product under consideration i.e. health mix is widely consumed by upper class. ➢ there is possibility of coverage of large variety of products under this description, which may not be the intent of the proposal. ➢ considering this proposal may create exception from similarly placed products. ➢ as it is a mixture of various ingredients, it is not comparable with Sattu. • Officer from Karnataka suggested to remove the word 'health mix' and re-word the proposed entry. • Accordingly, it is felt that the issue need to be further deliberated.

Goods-No change recommended (2) :

Agenda No.	Issue/Proposal	Status after officers' meeting
5 (Annexure-II) S.No. 1 Page No. 163	➢ Supply of tendu leaves by a plucker (agriculturist) to any registered person attracts 18% GST under RCM. Request is to reduce it to Nil. ➢ After deliberations on representations of Odisha, M.P. and Chhattisgarh, Fitment Committee recommended to maintain *status quo*.	Officers from all states agreed to the proposal except officers from **Odisha** and **Telangana** who requested to reduce the rate to NIL.
5 (Annexure-II) S.No. 2 Page No. 163-164	➢ Request is to reduce the GST on Ship/Vessel breaking from 18% to less than 10%. ➢ ITC of GST paid on ships/vessels imported for breaking is available to ship-breakers, which can be used to set off liability which arises when ship breakers sells scrap. Therefore, Fitment Committee recommended to maintain *status quo*.	Agreed

Goods- Deferred Issue (1):

Agenda No.	Issue/Proposal	Status after officers' meeting
5 (Annexure-III) S.No. 1 Page No. 165-169	➢ On the issue of Compensation cess on Utility vehicles like MUV/XUV , Fitment Committee recommended to defer the issue as the issue needs to be decided after detailed study in consultation with stakeholders	Agreed

Services- Change recommended (2) :

Agenda No.	Issue/Proposal	Status after officers' meeting
5 (Annexure-IV) S.No. 1 Page No. 170-171	➢ Conduct of entrance examinations by NTA and similar Central and State bodies for admission to educational institutions merits exemption on the grounds of parity. ➢ Accordingly, Fitment recommended to insert an explanation in notification No. 12/2017-CT(R) dated 28.06.2017	Agreed
5 (Annexure-IV) S.No. 2 Page No. 171-172	➢ Courts and Tribunals besides judicial functions, also perform certain commercial activities such as renting of their premises to telecommunication companies for installation of towers, renting of chambers to lawyers ➢ Fitment Committee recommended that the same dispensation as available to Central and State Governments, Parliament and State Legislatures with regard to payment of GST under RCM may be extended to courts and tribunals also.	Agreed

Goods

- **Total 8 issues examined**
  - recommendations for making changes in GST rates/ issuing clarifications- **5** (Agenda 5: Annexure-I :pages 157 to 162)
  - recommendations for making no change - **2** (Agenda 5 Annexure-II: pages 163 to 164)
  - issue deferred for further examination – **1** (Agenda 5 : Annexure-III :pages 165 to 169)

9

Services

- **Total 2 issues examined.**
  - recommendations for making changes in GST rates/ issuing clarifications- **2** (Agenda 5: Annexure-IV : pages 170 to 172)

10

Recommendations of the Fitment Committee:
Goods

11

Agenda 5(Annexure-I) Changes in GST rates/ issuing clarification (pages-157-162)

1. Rab : (page 157)

- On the recommendations of 48th GST Council, a clarification was issued that rab is classifiable under heading 1702 attracting GST rate of 18%.

- A request has been received:
  - to create a special entry for rab, and
  - to treat rab on similar lines of jaggery (Nil rate in loose form; 5% in prepackaged & labelled form) stating that it is a liquid form of jaggery.

- Fitment Committee recommendations:-
  - GST rate on rab may be reduced to 5% if sold in prepackaged and labelled form and nil, if sold in loose form.
  - clarifying that the issue for the past periods may be regularized on *as is basis*.

Agenda 5 (Annexure-I)

2. **Pencil Sharpener** (Pages 158-160)

- Based on report of *GoM on Rate Rationalization*, GST Council in its 47th Meeting recommended to increase GST rate on Pencil Sharpeners (CTH 8214) from 12% to 18% in order to remove the inverted duty structure.
- During the discussion in 48th meeting, on the anomalous entry for pencil sharpeners, it is requested by few members to re-consider the increase in GST rate of pencil sharpener on the ground of its use by school children. Accordingly, the issue was referred to Fitment Committee.

- Meanwhile, a domestic manufacturer represented that they have to discharge 18% on mixed supply of pencil set , which includes sharpeners (18%), pencils (12%), erasers (5%) ,due to 18% rate on pencil sharpener.
- For instance, for a mixed pack costing INR 125, the price of sharpener is in the range of INR 3 to INR 5, but GST on entire pack would be 18%.

- Fitment Committee recommendation:

  GST rate on Pencil Sharpeners (CTH 8214) may be reduced from 18 % to 12%.

Agenda 5 (Annexure-I)

3. **Tracking Devices/ Data loggers for durable containers** : (Page 160)

- Notification No. 104/94- Customs dated 16.03.1994 provides exemption from *Customs Duty* and *IGST* to imported containers of durable nature provided the same are re-exported within a period of 6 months.
- Shippers requested for exemption for tracking devices/data loggers (HSN 8526 91) as is available to import of containers under above notification on the ground that these goods will be fixed/installed on containers.

- The GST rate on goods falling under HSN 852691 described as "Radio-navigational aid apparatus" is 18%.

- Fitment Committee recommendations:
  - insert a proviso in the notification that if such device is already affixed on container, no separate IGST shall be levied on such affixed device and the 'Nil' IGST treatment available for the container under notification No. 104/94-Customs shall also be available subject to existing conditions.
  - However, tracking devices imported separately for affixing on the containers, shall attract applicable IGST.

Agenda 5 (Annexure-I)

4. Coal Rejects: (page 161)

- Sl. no. 41A of notification no. 1/2017-Compensation Cess (Rate), exempts *coal rejects* supplied by a coal washery arising out of coal, from compensation cess , provided compensation cess has been paid on raw coal and no input tax credit thereof has been availed by any person.
- Principal users like power companies pay compensation cess on entire quantity of raw coal purchased and send the raw coal to coal washeries for beneficiation. Washed coal is sent back to the principal user while the coal rejects are sold by the power companies to the washeries which disposes off the coal rejects.
- Representation was received that in certain cases, the principal users have been availing credit of compensation cess to discharge the liability of compensation cess on coal rejects supplied to the coal washeries. In such a case, the washery was not able to get benefit of the exemption as principal user has availed input tax credit.
- The exemption was given to the washery to avoid double taxation on coal on which compensation cess has already been paid. Payment of compensation cess again on coal rejects on which no ITC is available became a cost to the washeries.
- Recommendations of Fitment Committee :

Amend the entry to cover *coal rejects* supplied to and by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has been availed by any person.

15

Agenda 5 (Annexure-I)

5. Millet-based health mix products consisting at least 70% of millets

(Pages 161 -162)

- Presently, such products attract GST rate at 18%.
- Representation received for reduction of tax rate on millet- based health mix products (predominantly consisting of millets) on par with sattu/ chhatua (HS 1106) and reduce tax rate on them from 18% to 5% (pre-packaged and labelled)/Nil.
- In the instant case, the product contains not only millets or pulses but also cardamom, pepper etc., to enhance the flavour. Therefore, the product is a *food preparation* of flour, groats, meal etc.
- UN is celebrating the International Year of the Millets in 2023.
- Fitment Committee recommendations:
  - GST rate on millet-based health mix consisting at least 70% of millets may be reduced to nil if any is sold in loose form or 5%, if it is sold in pre-packaged and labelled form.
  - the goods may be classified under HS 1901 or 2106 depending on the substances added to the millet flour.

16

Agenda 5 (Annexure-II): Recommendations for no change (pages-163-164)

1. Bidi wrapper leaves – Kendu/Tendu : *(page 163)*

- Presently supply of tendu leaves by an agriculturist to any registered person attracts 18% GST under RCM.
- Earlier, issue of GST rate on tendu leaves was discussed in 14th, 15th, 22nd and 37th meeting.
- Now, request is to reduce the rate to NIL.
- Officials from State of Odisha, Chhattisgarh and Madhya Pradesh were invited to present their views in the Fitment Committee. It was represented that:
  - State of Odisha : Pre-GST rate was around 5.91 %, and tendu trade is affected with higher GST rate.
  - State of M.P : MP has 3-tier cooperative system of collection of leaves (Pluckers-cooperative-beedi makers) which works on profit sharing basis ; rate should not be reduced ; average procurement of tendu leaves has increased compared to pre-GST.
  - State of Chhattisgarh: Status quo to be maintained. They also have 3-tier system and profits are being shared with pluckers.

- Fitment Committee Recommendations:

  Status quo to be maintained.

17

Agenda 5 (Annexure-II)

2. Ships/vessels for breaking up *(page 163-164)*

- Presently, ships/vessels for breaking up attracts 18% GST . This rate was recommended by the Council in 14th meeting.
- Now, request is to reduce the rate to less than 10%.

- Ministry of Shipping represented that :
  - ship breaking yards are upgraded to EU standards and are now in consonance with Hongkong convention, which is making India un-competitive vis-à-vis neighbouring countries who have not adopted such standards
  - final product of ship breaking industry is ferrous waste and scrap , which also attracts 18% . Thus, if IGST on ships/vessels for breaking is reduced to less than 10%, it would not lead to inversion.

- ITC of GST paid while importing ships/vessels is available to ship-breakers, which can be used to set off liability which arises when ship breakers sells scrap.

- Fitment Committee Recommendations:

  Status quo to be maintained.

18

Agenda 5 (Annexure-III) Issue deferred for further examination (pages-165-169)

1. Compensation cess on Utility vehicles like SUV/MUV: *(page 165-169)*

- During 48th GST council meeting, on the issue of compensation cess leviable on SUVs, it was suggested by few of the members to deliberate about compensation cess on other utility vehicles such as MUV, XUV. Accordingly, the issue was referred to Fitment Committee.

- Fitment Committee examined the matter in detail in meeting dated 03.02.2023 and 07.02.2023 including the issue that *all utility vehicles* provided they satisfy the specifications of engine capacity > 1500cc, length > 4000mm and ground clearance > 170mm and also *other motor vehicles covered under 52A*, for levy of compensation cess rate of 22%.

- Fitment Committee Recommendations:

Deferred: the issue needs to be decided after detailed study in consultation with stakeholders

19

Recommendations of the Fitment Committee: Services

20

Agenda 5(Annexure-IV). Changes in GST rates/ issue clarification (page-170-172)

1. Services supplied by National Testing Agency (NTA) by way of conduct of entrance examinations for admission to educational institutions *(pages 170-171)*

- Currently, entrance examinations conducted by Government and private universities and colleges as well as by Central and State Educational Boards are exempt from GST.
- However, entrance examinations conducted by NTA such as JEE (Mains), NEET (UG), CMAT, GPAT for admission to educational institutions are not exempt from GST as NTA is a registered society.
- Conduct of entrance examinations by NTA and similar Central and State bodies for admission to educational institutions merits exemption on the grounds of parity.

- Recommendations of Fitment Committee

An explanation may be inserted in notification No. 12/2017-CT(R) dated 28.06.2017 as below:

"For removal of doubts, it is clarified that any authority, board or a body set up by the Central Government or State Government for conduct of entrance examination for admission to educational institutions shall be treated as an 'educational institution' for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions."

21

Agenda 5 (Annexure-IV)

2. Services supplied by Courts/Tribunals under Reverse Charge Mechanism (RCM) *(Pages 171-172)*

- Services by Courts and Tribunals have been declared as neither a supply of goods nor a supply of service. [Schedule III, Para 2 of CGST Act, 2017]
- Courts and Tribunals besides judicial functions, also perform certain commercial activities such as renting of their premises to telecommunication companies for installation of towers, renting of chambers to lawyers etc.
- As recommended by Law Committee, these commercial activities of Courts and Tribunals are taxable.
- The issue before Fitment Committee was whether the services supplied by Courts/Tribunals can be taxed under Reverse Charge Mechanism (RCM).
- It may be noted that:
  - ❖ Services supplied by government to business entities are taxable under RCM with few exceptions such as services by way of transportation of goods and passengers, postal services and renting of immovable property.
  - ❖ GST on renting of immovable property by Central or State Governments or local authorities to unregistered persons is taxable under Forward Charge.
  - ❖ GST on renting of immovable property by Central Government, State Government, or local authority to a registered person is taxed under Reverse Charge Mechanism.
- As recommended by the 31st GST Council meeting dated 22.12.2018, the same dispensation as available to Central and State Governments with regard to payment of GST under RCM has been extended to Parliament and State Legislatures.
- Recommendations of Fitment Committee:

Same dispensation as available to Central and State Governments, Parliament and State Legislatures with regard to payment of GST under RCM may be extended to courts and tribunals also.

THANK YOU

23

Laying the final report

of

Group of Ministers

on

"Capacity Based Taxation and Special Composition Scheme in certain sectors in GST"

18th February 2023

Background

- As discussed in the 42nd meeting of the GST Council, a **Group of Ministers (GoM)**, on Capacity-based Taxation on Pan Masala, Reverse Charge Mechanism in mentha oil and Special Composition Scheme on brick kilns, stone crushers etc., was constituted on 24.05.2021.

Sl.	Name	Designation & State	
1	Sh. Niranjan Pujari	Minister for Finance, Odisha	Convener
2	Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3	Sh. Dushyant Chautala	Deputy Chief Minister, Haryana	Member
4	Sh. K. N. Balgopal	Minister for Finance, Kerala	Member
5	Sh. Jagdish Devda	Minister for Finance, Madhya Pradesh	Member
6	Sh. Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh	Member
7	Sh. Subodh Uniyal	Minister for Agriculture, Uttarakhand	Member

DoR, Ministry of Finance O.M. dated 24th May 2021

ToR

Terms of Reference:

a. To examine the possibility of levy of GST based on capacity of manufacturing unit and special composition schemes in certain evasion prone sectors like pan masala and gutkha, brick kilns, sand mining etc with reference to the current legal provisions

b. To examine whether any change is required in the legal provisions to allow such levy

c. To examine the impact of such levy on the destination nature of current GST design

d. To examine any other administrative or systemic mechanism to plug leakages in these sectors

e. To examine the impact of levy on reverse charge on mentha oil and to examine if there could be other class of supplies that could be subjected to reverse charge to augment revenue

- Thee meetings of Group of Ministers were held to deliberate on the issue.
  - 1ST Meeting -06th July 2021 on virtual mode
  - 2ND Meeting – 31st August 2021 on virtual mode
  - 3RD Meeting – 07th July 2022

3

Broad Challenges in implementation of Capacity Based levy

The GoM extensively deliberated on the issues like broad challenges associated with and complexities involved in the implementation of capacity-based levy in the sector:

- GST is a destination-based tax applies to supply of goods or services and not on their production.
- Constitution doesn't provide authority for capacity-based GST
- It is extremely complex & requires frequent changes in rate structure.
- No further check and verification in the supply chain
- It suppresses competition and goes against the small producers, who are not capable of making huge investment in capital infrastructure.
- It has deep rooted malaise. It may encourage "*officer-producers*" collusion at the level of jurisdictional officers.

4

International Practices

- GoM agrees that GST Evasion is rampant in the sector
- Tax Evasion in tobacco product is common internationally
- Alternate possible systemic & administrative mechanisms to curb evasion and enhance compliance & enforcement measures are the need of the hour.
- International best practices to curb illicit trade in tobacco sector is with electronic means - *track and trace method*

5

Options for Enhancing Compliance

- **Registration and Details of Machines:** Manufacturer of tobacco products to take registration of each machines & require to disclose make, year of production, no of tracks and capacity of machine.
- **Special Monthly Return:** A special monthly return indicating machine-wise/shift-wise production & disclosing details like Machine disposed off, machine added, Inputs procured and utilized in quantity and value terms, Product-wise and brand-wise details of clearance in quantity and value terms, shift-wise records of reading of electricity meters and DG set meters, waste generation stock, etc.,
- **Certification of production capacity:** Production capacity and quantity in unit per pouch/container shall be duly certified by registered Chartered Engineer.
- **Copy of declaration in respect of production capacity** submitted to other department/agency/organization (if any), etc.;
- **Disclosure of details of non-working/partially working machines**;

6

Options for Enhancing Compliance *(Contd.)*

- If required, installation of 24*7 CCTV cameras by the manufacturers [*it was however felt that this may be intrusive and be considered carefully*];
- Prescribing a heavy penalty for running any unregistered machine.
- Gradually, the requirement of unique identification marking such as QR code or stamps, on each packet/ pouch will be prescribed. The unique identifier shall enable determination of the following:
    - the date, place and factory of manufacture;
    - the machine used to manufacture;
    - the production shift or time of manufacture;
    - the product description, quantity and maximum retail sale price;
    - any other relevant information, as may be prescribed.

7

Options for Enhancing Compliance *(Contd.)*

- The GoM also suggested that there is a need to further strengthen the tracking measures along the supply chain of these evasion-prone commodities through measures like
    - mandatory e-invoicing [irrespective of turnover],
    - mandatory e-way bill [irrespective of invoice value],
    - mandatory FAST tag/RFID on the vehicle,
    - vehicle tracking through "V A H A N" app & GPS installation,
    - priority alert in E-way bills for such products, and
    - mandatory e-invoicing including B2C invoices under GST for such suppliers.

8

Options for Enhancing Compliance *(Contd.)*

- GoM observed that there are instances of greater leakage of revenue at later stage of supply chain (distributor/retailer) and most of the unregistered end retailers of the products. To tackle this issue, GoM recommends that the Compensation Cess levied on such evasion prone commodities like pan masala, gutkha, chewing tobacco and other similar products be revised from the current *ad valorem* tax to **specific tax-based levy linked to retail sale price** to maintain revenue buoyancy. This will boost collection of revenue at the first stage (level of manufacturer).

9

Options for Enhancing Compliance *(Contd.)*

- To curb fake invoicing and fraudulent exports thereof for claiming undue refund, GoM suggested that for commodities like pan masala, gutkha, chewing tobacco, and similar other goods, the IGST refund route on exports be closed, similar to the recommendation made for Mentha Oil and if necessary, exports may only be allowed against LUT with the consequential refund of accumulated input tax credit.

- Since illicit trade in tobacco sector is a global phenomenon, GoM deliberated on the international best practices to tackle this menace by putting in place a technology driven Track and Trace mechanism. for all the tobacco products, preferably by the end of 2023, while carrying out the associated infrastructural, systemic & legal feasibility studies to implement the same.

10

THANK YOU

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, in the 49th meeting held on 18th February, 2023, the GST Council had ratified all the notifications, circulars, and orders issued up to 10.02.2023.

2. In this respect, the following notifications and circulars issued after 10.02.2023 till 30.06.2023 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. 02/2023-Central Tax dated 31.03.2023	Amnesty to GSTR-4 non-filers
		2. Notification No. 03/2023-Central Tax dated 31.03.2023	Extension of time limit for application for revocation of cancellation of registration
		3. Notification No. 04/2023-Central Tax dated 31.03.2023	Amendment in CGST Rules
		4. Notification No. 05/2023-Central Tax dated 31.03.2023	Seeks to amend Notification No. 27/2022 dated 26.12.2022
		5. Notification No. 06/2023-Central Tax dated 31.03.2023	Amnesty scheme for deemed withdrawal of assessment orders issued under Section 62
		6. Notification No. 07/2023-Central Tax dated 31.03.2023	Rationalisation of late fee for GSTR-9 and Amnesty to GSTR-9 non-filers

Notifications under UTGST Act / UTGST Rules		7. Notification No. 08/2023-Central Tax dated 31.03.2023	Amnesty to GSTR-10 non-filers
		8. Notification No. 09/2023-Central Tax dated 31.03.2023	Extension of limitation under Section 168A of CGST Act
		9. Notification No. 10/2023-Central Tax dated 10.05.2023	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Crore from 1st August 2023.
		10. Notification No. 11/2023-Central Tax dated 24.05.2023	Seeks to extend the due date for furnishing FORM GSTR-1 for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
		11. Notification No. 12/2023-Central Tax dated 24.05.2023	Seeks to extend the due date for furnishing FORM GSTR-3B for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
		12. Notification No. 13/2023-Central Tax dated 24.05.2023	Seeks to extend the due date for furnishing FORM GSTR-7 for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
		13. Notification No. 14/2023-Central Tax dated 19.06.2023	Seeks to extend the due date for furnishing FORM GSTR-1 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur
		14. Notification No. 15/2023-Central Tax dated 19.06.2023	Seeks to extend the due date for furnishing FORM GSTR-3B for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.

		15. Notification No. 16/2023-Central Tax dated 19.06.2023	Seeks to extend the due date for furnishing FORM GSTR-7 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.
		16. Notification No. 17/2023-Central Tax dated 27.06.2023	Extension of due date for filing of return in FORM GSTR-3B for the month of May 2023 for the persons registered in the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat upto 30th June 2023.
	Central Tax (Rate)	1. Notification No. 1/2023-Central Tax (Rate), dated 28.02.2023	Seeks to amend notification No. 12/2017- Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 49th meeting held on 18.02.2023.
		2. Notification No. 2/2023-Central Tax (Rate), dated 28.02.2023	Seeks to amend notification No. 13/2017- Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 49th meeting held on 18.02.2023.
		3. Notification No. 3/2023-Central Tax (Rate), dated 28.02.2023	Seeks to amend notification no. 1/2017-Central Tax (Rate), dated 28.06.2017
		4. Notification No. 4/2023-Central Tax (Rate), dated 28.02.2023	Seeks to amend notification no. 2/2017-Central Tax (Rate), dated 28.06.2017.
		5. Notification No. 5/2023-Central Tax (Rate), dated 09.05.2023	Seeks to amend notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 so as to extend last date for exercise of option by GTA to pay GST under forward charge.

	Union Territory Tax (Rate)	1. Notification No. 1/2023- Union Territory Tax (Rate), dated 28.02.2023	Seeks to amend notification No. 12/2017- Union Territory Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 49th meeting held on 18.02.2023.
		2. Notification No. 2/2023- Union Territory Tax (Rate), dated 28.02.2023	Seeks to amend notification No. 13/2017- Union Territory Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 49th meeting held on 18.02.2023.
		3. Notification No. 3/2023- Union Territory Tax (Rate), dated 28.02.2023	Seeks to amend notification no. 1/2017- Union Territory Tax (Rate), dated 28.06.2017
		4. Notification No. 4/2023- Union Territory Tax (Rate), dated 28.02.2023	Seeks to amend notification no. 2/2017- Union Territory Tax (Rate), dated 28.06.2017.
		5. Notification No. 5/2023- Union Territory Tax (Rate), dated 09.05.2023	Seeks to amend notification No. 11/2017- Union Territory Tax (Rate) dated 28.06.2017 so as to extend last date for exercise of option by GTA to pay GST under forward charge.
Notifications under IGST	Integrated Tax (Rate)	1. Notification No. 1/2023-Integrated Tax (Rate), dated 28.02.2023	Seeks to amend notification No. 9/2017- Integrated Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 49th meeting held on 18.02.2023.
		2. Notification No. 2/2023- Integrated Tax (Rate), dated 28.02.2023	Seeks to amend notification No. 10/2017- Integrated Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 49th meeting held on 18.02.2023.

Act / IGST Rules		3. Notification No. 3/2023- Integrated Tax (Rate), dated 28.02.2023	Seeks to amend notification no. 1/2017-Integrated Tax (Rate), dated 28.06.2017.
		4. Notification No. 4/2023- Integrated Tax (Rate), dated 28.02.2023	Seeks to amend notification no. 2/2017-Integrated Tax (Rate), dated 28.06.2017.
		5. Notification No. 5/2023- Integrated Tax (Rate), dated 09.05.2023	Seeks to amend notification No. 08/2017- Integrated Tax (Rate) dated 28.06.2017 so as to extend last date for exercise of option by GTA to pay GST under forward charge.
Notifications under Goods and Services Tax (Compensation to States) Act, 2017	Compensation Cess	1. Notification No. 01/2023-Compensation Cess dated 31.03.2023	Seeks to provide commencement date for Section 163 of the Finance Act, 2023
	Compensation Cess (Rate)	1. Notification No. 01/2023-Compensation Cess (Rate) dated 28.02.2023	Seeks to amend notification no. 1/2017- Compensation Cess (Rate), dated 28.06.2017
		2. Notification No. 02/2023-Compensation Cess (Rate) dated 31.03.2023	Seeks to further amend notification No. 1/2017-Compensation Cess (Rate), dated 28th June, 2017.
Circulars under CGST Act		1. Circular No. 191/03/2023 dated 27.03.2023	Clarification regarding GST rate and classification of 'Rab' based on the recommendation of the GST Council in its 49th meeting held on 18th February 2023.

3. It is mentioned that some of the notifications referred in Para 2 above have been issued as per the recommnedations of GST Impementation Committee (GIC). Details of the same are given in Annexure enclosed with this agenda note. The details of such decisions and the relevant Notifications and Circulars issued to implement such decisions are enclosed as **Annexure 2A** to this Agenda Note.

4. The GST Council may grant ratification to the notifications and circulars as detailed in para 2 above.

*****

Annexure-2A

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

The GST implementation Committee (GIC) took certain decisions between 49th GST Council meeting and the upcoming 50th GST Council meeting. 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. GIC Decision by Circulation dated 31st January, 2023 on GST Data sharing request received from Department of Telecommunications, M/o Communications.

a. In the agenda note, it was stated that it was mentioned in the letter received from the Department of Telecommunications (DoT) that the National Digital Communication Policy (NDCP) mandates the DoT to increase domestic production of telecom products and hence, it is necessary to monitor annual domestic production/ value addition in telecom sector. The policy also mentions that the share of telecom in national GDP would be increased from 6% to 8%. In this regard, DoT has approached GSTN for disaggregate data about the production of goods and services relating to telecom sector. However, DoR has explained the data sharing policy position and agreed to share the aggregate level data only. Accordingly, DoT has requested to provide anonymised aggregate data (HSN wise on telecom equipment) without the identification of the tax payer as available with GSTN.

b. It further stated that FORM GSTR-1 has been capturing 4-6 digit HSN/SAC code for the products and services. DoT has sent a list of products and services for which they are seeking 4-digit level "8517"- HSN exclusively for telecom products including mobile handset and "9984" - SAC for telecom services. DoT further requested that data can also be provided for combination of product description and HSN Code.

c. It was also stated in the agenda note that since DoT has agreed to receive anonymised aggregate level GST data for telecom products and services, GSTN may be permitted to share the data with DoT. It may be noted that GST Council in its 48th meeting has already approved the GST data sharing with other Ministries/Departments.

d. Accordingly, approval of GIC was sought for GST data sharing with Department of Telecommunications, M/o Communications.

e. Decision: The GIC approved the agenda relating to GST Data sharing request received from Department of Telecommunications, M/o Communications.

2. GIC Decision by Circulation dated 10th April, 2023 on nomination of officers for All India Co-ordination Committee as per Model All India GST Audit Manual.

a. In the agenda note reference was made to the Model All India GST Audit Manual which was placed for circulation before the GST Council in its 49th Meeting held on 18th February, 2023 at New Delhi. In Model All India GST Audit Manual it has been proposed that GST Council may form an 'All India Coordination Committee' of Officers which should choose themes for

conducting audit, constitute a Committee of Officers for selecting taxpayers in a state for conducting thematic audit, coordination among various audit authorities for evolving a common minimum audit plans for a given theme and monitor actual audit by the field formations and disseminate audit outcome to appropriate stakeholders.

b. It was further stated that the All India Audit Manual has recommended that the 'All India Coordination Committee' may be constituted with the following officers as its members:

a) Pr. DG/DG (Audit) or any Pr. Additional Director General (Audit) / Additional Director General (Audit) as nominated by him;
b) Joint Secretary, GST Council;
c) Pr. Commissioner/ Commissioner (GST), GST Policy Wing;
d) CEO, GSTN;
e) Three Commissioners of SGST, as nominated by the GST Council;
f) One CGST (Audit) Commissioner as nominated by the GST Council.

c. Accordingly, in the agenda note it was proposed that the said Committee may be constituted as above for the performance of functions as per the All India Audit Manual. The Committee Members at Sl. Nos. 'a' to 'd' of the above said Committee are designation based and require no further nominations. However, the Committee Members at Sl. No. 'e' and 'f' above are to be nominated by the GST Council. As the matter is procedural in nature, the GIC may consider nominating the officers of SGST and CGST to the All India Coordination Committee. In this regard it is proposed that we may have a policy of nominating the officers from State on a rotational basis from different States in each geographical zones to the 'All India Coordination Committee' for a period of one year. Further with regard to nomination of officer at serial number 'f' of Para 2 above, it is proposed that similar policy may be adopted for their nomination on rotational basis from different States and zones for a period of one year. The rotation would be such so as to give opportunity first to every State. Thus, each state would become a member of the Committee.

d. Accordingly, in the agenda note it was proposed that the following three Commissioners of SGST may be nominated from different geographical zones with respect to Sl. No. 'e' of Para 2 above:

1. CCT, SGST Maharashtra (West Zone)
2. CCT, SGST, West Bengal (East Zone)
3. CCT, SGST Karnataka (South Zone)

With respect to officer at serial number 'f' of Para 2 above, it was proposed that the following CGST (Audit) Commissioner may be nominated:

1. Commissioner (Audit), Ludhiana (North Zone)

e. Decision: The GIC approved the agenda relating to Nomination of officers for All India Co-ordination Committee as per Model All India GST Audit Manual.

f. Implementation Status: OM for the nomination of members for All India Co-ordination Committee as approved by GIC has been issued.

3. GIC Decision by Circulation Dated 27th April, 2023 on roll out of sixth phase of e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Cr.

a. In the agenda note, it was stated that it may be recalled 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 Rs. 500 crore 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 Rs. 100 crore from 01.01.2021. Vide notification No. 05/2021-CT dated 08.03.2021, the same has been extended for taxpayers with turnover of more than Rs. 50 crore from 01.04.2021. Further, vide notification No. 01/2022-CT dated 24.02.2022, the same has been extended for taxpayers with turnover of more than Rs. 20 crore from 01.04.2022. Vide notification No. 17/2022- Central Tax dated 01.08.2022, e-invoicing has been made mandatory for taxpayers with turnover of more than Rs. 10 crore from 01.10.2022.

b. It was also stated that vide email dated 31.03.2023, GSTN has informed that now NIC/ GSTN are in preparedness for lowering of threshold of generation of e- invoices for B2B and export transactions up to turnover limit of Rs. 5 crore and above. The issue was deliberated in the National Co- ordination Meeting of State and Central Tax officers held on 24.04.2023, wherein it was decided that the threshold of generation of e-invoices for B2B and export transactions may be lowered up to turnover limit of Rs. 5 crore and above.

c. Further it was stated in the agenda note that vide email dated 25.04.2023, GSTN has provided the data related to number of taxpayers, along with their turnover, as given below:

Summary of Slab wise PAN level AATO in any of the previous financial years (2017-18 to 2021- 22)		
Turnover slabs	**Number of PANs**	**Number of GSTINs**
Turnover above 500Cr	10,644	72,913
Turnover between 100Cr to 500Cr	43,517	1,13,646
Turnover between 50Cr to 100Cr	59,332	1,02,614
Turnover between 20Cr to 50Cr	1,86,922	2,61,664
Turnover between 10Cr and 20Cr	2,95,533	3,68,554
Turnover between 5Cr and 10Cr	**4,91,157**	**5,75,810**

d. GSTPW, CBIC also stated in the agenda note that E-invoice has been one of the major reforms undertaken by the Government which is beneficial for both tax administration as well as trade. It helps the taxpayers in backward integration and automation of tax relevant processes and in real-time updation of data on the GSTN system and thereby, drastically reducing the time taken in filing the returns. Besides, it also facilitates correct reporting of the details of the supplies, thus helping in curbing tax evasion. Therefore, it is proposed that next phase of e-invoicing may be rolled out. Taxpayers with annual turnover of more than Rs. 5 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 sixth phase as per capacity of GSTN/NIC. 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. Data suggests that approximately 5,75,810 GSTINs have AATO between rupees 5 Cr to 10 Cr who would be impacted by the decision.

Accordingly, it was proposed that the threshold for issuance of e-invoice for B2B transactions and for export invoices may be reduced to Rs 5 crore. Further, to provide sufficient time to taxpayers as well as NIC to make necessary preparations, the said reduction in threshold for generation of e-invoices may be done with effect from 01.07.2023.

e. It was further stated in the agenda note that as the notification to this effect is required to be issued at the earliest to give sufficient time to the taxpayers, coming under purview of e-invoicing by this change, so as to enable them to make due preparation for e-invoicing. However, as no meeting of GST Council has been announced yet. Accordingly, considering the urgency of the matter, the proposal was placed before the GIC for approval.

f. Decision: The GIC approved the proposal for roll out of sixth phase of e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Crore with effect from 01.08.2023.

g. Implementation Status: In pursuance of GIC decision dated 27.04.2023, Notification No. 10/2023- Central Tax dated 10.05.2023 was issued to implement e-invoicing for B2B transactions and exports for the taxpayers having aggregate turnover exceeding Rs. 5 Crore from 1st August 2023.

4. GIC Decision by Circulation dated 27th April, 2023 on Proposal for integration of GSTN's E-waybill system with ULIP

a. In the agenda note, it was stated that a proposal had been received from DPIIT, Ministry of Commerce and Industry for integration of Unified logistics Interface Platform (ULIP) with GSTN's E waybill System. The detailed proposal is placed as Annexure.

b. ULIP is an important component of National Logistics Policy inaugurated by Hon'ble PM on 17.9.2022. The request for data to be shared is covered at Para D of the Annexure. The **para D of the Annexure** is reproduced below:

E-WAY BILL DATA	REMARKS
E-way bill Number / time-Stamp	ULIP will send the API request with E-way bill number. In response to API message, E-way bill number creation and expiry time-stamp to be shared by GSTN

HSN Code	The data field will help in categorizing the cargo movement.
Dispatch from Pin code Ship to - PIN Code	This set of information shall provide information relating to source and destination of the cargo and will be helpful in mapping.
Mode and carrier Number	The data-field shall provide the information of transportation type and carrier number. With this data field, movement of the cargo can be tracked for all modes of logistics through one reference number as ULIP is already integrated with FasTag E-tolling system, FOIS system of Indian Railways, NLP marine as well as Air-cargo community systems. This information along with other integrations of ULIP in-turn will help in creating various analytics, e.g. efficiency of various modes of logistics between a source and destination, infrastructure requirements/planning, etc. This will help in informed decision making by the trade with regard to modal shift.

c. ULIP will not collect any data which will lead to disclosure of user specific information like details of taxpayer, consignor/ consignee details etc. The GST Council in its 48th meeting has approved the policy tor GST data sharing with other Ministries/ Departments. Accordingly, approval of GIC was sought for the proposal for integration of GSTN's E-waybill system with ULIP.

d. Decision: The GIC approved the agenda relating to proposal for integration of GSTN's E-waybill system with ULIP.

5. Decision of GIC by Circulation on 28th April, 2023 on extension of deadline for exercising of option by Goods Transport Agencies (GTAs) to pay GST under forward charge mechanism from 15th March, 2023 to 31st May, 2023.

a. In the agenda note, it was stated by TRU that All India Transporters Welfare Association (AITWA) has requested inter-alia that the deadline for exercising option by Goods Transport Agencies (GTAs) to pay GST under forward charge mechanism (FCM) may be extended from 15th March, 2023 to 31st May, 2023.

b. It was further stated in the agenda note that some GTAs were not able to meet the deadline due to various reasons such as:

(i) They presumed that the requirement was only for those who are going in for FCM from 2023-24;
(ii) They submitted the hard copy of Annexure V before 15th March 2023 but missed the online application;
(iii) They were unaware of the requirement and did not submit Annexure V, either online or offline, before the deadline;

(iv) They applied for a new GST registration in March 2023 and received the number after 15th March 2023, and thus, were not able to submit Annexure V within the given window.

c. TRU also stated in the agenda note that AITWA and All India Motor Transport Congress (AIMTC) have also requested that GTAs who have commenced new business after the last date for filing the declaration, may also be allowed to exercise option to be under FCM.

d. It was also mentioned that background of the issue is that GTAs who want to pay GST under FCM during any financial year are required to exercise the option to do so by filing an online declaration on GSTN portal by 15th March of the preceding financial year. This requirement was notified on 13.07.2022 vide notification no. 03/2022-CT(R) (copy enclosed) based on the recommendations of the 47th GST Council meeting. Accordingly, the deadline for exercising this option for financial year 2023-2024 was 15th March, 2023.

e. TRU in their agenda note submitted that since, the requirement to file the declaration on GSTN portal is a new procedural requirement which was notified last year on 13.07.2022, and has come into effect from the current financial year that is, 2023-2024, the request to extend the last date for filing declaration from 15th March, 2023 to 31st May, 2023 may be accepted.

f. Further it has been stated that there is also merit in the request of the two associations to allow new GTA businesses who have obtained registration after 15th March, 2023 to exercise this option for financial year 2023- 2024. In this regard, it was proposed that GTAs who commence new business or cross registration threshold during any financial year, may be allowed to exercise the option to pay GST under FCM during the year in which they commence business or cross registration threshold within 45 days from date of applying for GST registration or 1 month from date of obtaining registration whichever is later.

g. Since there was no Council meeting scheduled in the near future and the current Financial Year had already begun, the following proposals were placed before the GST Implementation Committee (GIC) for approval:

(i) extension of the last date for exercising the option by GTAs to pay GST under FCM from 15th March, 2023 to 31st May, 2023;

(ii) GTAs who commence new business or cross registration threshold during any financial year, may be allowed to exercise the option to pay GST under forward charge during the year in which they commence business or cross registration threshold within 45 days from date of applying for GST registration or 1 month from date of obtaining registration whichever is later.

h. Decision: The Members of GIC approved the agenda on extension of deadline for exercising of option by Goods Transport Agencies (GTAs) to pay GST under forward charge mechanism from 15th March, 2023 to 31st May, 2023

i. Implementation Status: In pursuance of GIC decision dated 28.04.2023, Notification No. 05/2023- Central Tax (Rate) dated 09.05.2023 was issued to amend notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 so as to extend last date for exercise of option by GTA to pay GST under forward charge. Also, Notification No. 05/2023- Union Territory Tax (Rate)

dated 09.05.2023 was issued to amend notification No. 11/2017- Union Territory Tax (Rate) dated 28.06.2017 so as to extend last date for exercise of option by GTA to pay GST under forward charge. Further, Also, Notification No. 05/2023- Integrated Tax (Rate) dated 09.05.2023 was issued to amend notification No. 08/2017- Integrated Tax (Rate) dated 28.06.2017 so as to extend last date for exercise of option by GTA to pay GST under forward charge.

`

6. GIC Decision by Circulation dated 19th May, 2023 on Issue of seeking extension of due dates in filing of GSTR-1, GSTR-3B and GSTR-7 till 31st May, 2023 in the State of Manipur.

a. In the agenda note, it was stated that request has been received from the CCT Manipur on the captioned subject. It was stated that due to prevailing law and order situation in the State and to maintain peace and communal harmony, the state government has suspended the mobile data services and internet/data services including broadband services in the territorial jurisdiction of the State of Manipur. Hence, the timely filing of return FORM GSTR-1, GSTR-7 and GSTR-3B for the month of April, 2023 for all the GST registered persons in Manipur may not be possible due to unavailability of Internet Services.

b. Accordingly, the State of Manipur has requested to provide relief to registered persons in Manipur by extending the due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for the month of April 2023 until 31.05.2023. Further extension may also be required, if the suspension of mobile data and internet services are continued in the State of Manipur.

c. Therefore, the proposal from the State of Manipur along with draft notifications (Annexures A, B & C) was placed before the GIC for deliberation and approval.

d. Decision: The GIC approved the agenda on seeking extension of due dates in filing of GSTR-1, GSTR-3B and GSTR-7 for month of April 2023 till 31st May, 2023 in the State of Manipur.

e. Implementation Status: In pursuance of GIC decision dated 19.05.2023, Notification No. 11/2023- Central Tax dated 24.05.2023, Notification No. 12/2023- Central Tax dated 24.05.2023 & Notification No. 13/2023- Central Tax dated 24.05.2023 were issued to extend the due dates for filing of GSTR-1, GSTR-3B and GSTR-7 for Month of April 2023 till 31st May, 2023 in the State of Manipur.

7. GIC Decision by Circulation dated 09th June, 2023 on Issue of seeking extension of due dates in filing of GSTR-1, GSTR-3B and GSTR-7 till 30th June, 2023 in the State of Manipur.

a. In the agenda note, it was stated that request has been received from the CCT Manipur on the captioned subject. It was stated that due to volatile law and order situation in the State, mobile data services and internet/ data service is under suspension due to which timey filing of return in GSTR-1, GSTR- 3B and GSTR-7 for the month of May, 2023 for all the GST registered persons in Manipur is not possible in the State. Also, GSTR-1, GSTR-3B and GSTR-7 filing for the month of April, 2023 is very poor.

b. Accordingly, it had been requested to extend the due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for the month of April, 2023 and May, 2023 for the taxpayers registered in the State of Manipur till 30th June, 2023.

c. It was also mentioned that in view of the law and order situation in the State of Manipur, the due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for April, 2023 for the taxpayers registered in the State of Manipur were earlier extended until 31st May, 2023 vide Notifications dated 24.05.2023.

d. Decision: The GIC approved the agenda on seeking extension of due dates for filing of GSTR-1, GSTR-3B and GSTR-7 for month of April 2023 and May 2023 till 30th June, 2023 in the State of Manipur.

e. Implementation Status: In pursuance of GIC decision dated 09.06.2023, Notification No. 14/2023- Central Tax dated 19.06.2023, Notification No. 15/2023- Central Tax dated 19.06.2023 & Notification No. 16/2023- Central Tax dated 19.06.2023 were issued to extend the due dates for filing of GSTR-1, GSTR-3B and GSTR-7 for the months of April 2023 and May 2023 till 30th June, 2023 in the State of Manipur.

8. GIC Decision by Circulation dated 22nd June, 2023 on request for extension of due date for furnishing of FORM GSTR-3B by tax payers in certain Districts of Gujarat due to Biparjoy Cyclone.

a. In the agenda note it was stated that request has been received from the State of Gujarat on the captioned subject. It has been stated that a very severe Cyclonic Storm "Biparjoy" (pronounced as "Biporjoy") has hit the coastal districts of Saurashtra & Kutch in the State of Gujarat. The cyclone has made severe destruction, including damage to infrastructure, power and communication networks, transportation disruptions and impacts on civil structures. The cyclone has severely affected the districts of Kutch, Morbi, Jamnagar, Patan and Banaskantha. The internet connectivity as well as electricity supply have been badly affected by the cyclone since 14th June, 2023. The power is still not restored in many areas of these districts, therefore, it is still not possible for taxpayers to furnish the returns.

b. It was further stated that since many districts of Gujarat have been affected by the Biparjoy, the trade and industry within the State are also going to be affected adversely. Many trade and practitioners' associations have requested to extend the due dates of furnishing returns for the tax period May-2023. The Department has received representations from different Associations to extend the time limit for filing GSTR 3B returns for 15 days for the tax period May-2023.

c. In view of the above, it was requested by State of Gujarat to extend the time limit for filing GSTR 3B returns for the month of May 2023 for the affected districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat till 30th June 2023.

d. Decision: The GIC approved the agenda on request for extension of due date for furnishing of FORM GSTR-3B for the month of May 2023 by tax payers in the specified Districts of Gujarat due to Biparjoy Cyclone.

e. Implementation Status: In pursuance of GIC decision dated 22.06.2023, Notification No. 17/2023- Central Tax dated 27.06.2023, was issued to extend the due dates for filing of return in FORM GSTR-3B for the month of May 2023 for the persons registered in the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat upto 30th June 2023.

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

Agenda Item 3(i): Rules Amendment in accordance with the recommendations made by Group of Ministers (GoM) on implementation of E-way bill requirement for movement of Gold/ Precious stones under chapter 71

In 37th GST Council meeting held on 20th September, 2019, a **GoM was constituted** by the GST Council Secretariat with a mandate to examine the feasibility of implementation of e-way bill requirement for movement of gold and precious stones.

2. The GoM submitted its report containing *inter alia* the following recommendation in respect of e-way bill requirement 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.

3. The said recommendation of GoM were accepted by the GST Council in its 47th meeting held at Chandigarh on 28th -29th June, 2022. Accordingly, amendment is required to be made in the provisions of CGST Rules, 2017 to implement the said recommendations of the Group of Ministers accepted by the GST Council.

4. Accordingly, the Law Committee deliberated on the issue in its meeting held on 10/11.04.2023 and 03.05.2023.It was recommended by the Law Committee that a separate rule 138F may be inserted in CGST Rules, 2017, as well as in SGST Rules, 2017 of the States who want to mandate the requirement of e-way bills for intra-state movement of gold and precious stones under

Chapter 71, for implementing the said recommendations of GoM. LC recommended the following formulation of the said rule 138F to be inserted in CGST Rules, 2017 and SGST Rules, 2017:

A. SGST Rules

4.1 A new Rule 138F, as detailed below, may be inserted in the SGST Rules of States desirous of mandating e-way bills for intra-State movement of gold and precious stones under Chapter 71:-

"**138F. Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills in such cases.-** (1) Notwithstanding anything contained in rule 138, every registered person who causes intra-State movement of goods, specified at serial numbers 4 and 5 of the Annexure appended to sub-rule (14) of rule 138, where the consignment value exceeds such amount, not below rupees two lakhs, as the Commissioner may, in consultation with the jurisdictional Principal Chief Commissioner/ Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorized by him, notify -

(i) in relation to a supply; or
(ii) for reasons other than supply; or
(iii) due to inward supply from an un-registered person,

shall, before commencement of such movement, furnish information relating to the said goods as specified in **Part A** of **FORM GST EWB-01,** electronically, and a unique number shall be generated on the said portal:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in **Part A** of **FORM GST EWB-01** may be furnished by such e-commerce operator or courier agency.

(2) The information as specified in **PART B** of **FORM GST EWB-01** shall not be required to be furnished in respect of any movement of goods referred to in the sub-rule (1) and the e-way bill shall be generated in **FORM GST EWB-01**, electronically on the common portal, after furnishing information in **Part-A** of **FORM GST EWB-01** as specified in sub-rule (1).

(3) The information furnished in **Part A** of **FORM GST EWB-01** shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in **FORM GSTR-1**.

(4) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-waybill, the e-way bill may be cancelled, electronically on the common portal, within twenty-four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(5) Notwithstanding anything contained in this rule, no e-way bill is required to be generated-

(a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(b) where the goods are being transported-

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal.

(6) The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, ***mutatis mutandis***, apply to an e-way bill generated under this rule.

Explanation.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax charged in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods."

B. CGST Rules

4.2 A new Rule 138F, as detailed below, may be inserted in the CGST Rules, 2017:-

"**138F. Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills in such cases.-** (1) Where the Commissioner of State tax or Union Territory tax has mandated furnishing of information in accordance with sub-rule (1) of Rule 138F of the State or Union Territory Goods and Services Tax Rules in a particular State or Union Territory, every registered person who causes intra-State movement of goods, specified at serial numbers 4 and 5 of the Annexure appended to sub-rule (14) of rule 138, where the consignment value exceeds such amount, not below rupees two lakhs, as the Commissioner of State Tax may, in consultation with the jurisdictional Principal Chief Commissioner/ Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorized by him, notify -

(i) in relation to a supply; or
(ii) for reasons other than supply; or
(iii) due to inward supply from an un-registered person,

shall, notwithstanding anything contained in Rule 138, before commencement of such movement within the said State or, as the case may be, Union Territory, furnish information relating to the said goods as specified in **Part A** of **FORM GST EWB-01**, electronically, and a unique number shall be generated on the said portal:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in **Part A** of **FORM GST EWB-01** may be furnished by such e-commerce operator or courier agency.

(2) The information as specified in **PART B** of **FORM GST EWB-01** shall not be required to furnished in respect of movement of goods referred to in the sub-rule (1) and the e-way bill shall be generated in **FORM GST EWB-01**, electronically on the common portal, after furnishing information in **Part-A** of **FORM GST EWB-01** as specified in sub-rule (1).

(3) The information furnished in **Part A** of **FORM GST EWB-01** shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in **FORM GSTR-1**.

(4) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-waybill, the e-way bill may be cancelled, electronically on the common portal, within twenty-four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(5) Notwithstanding anything contained in this rule, no e-way bill is required to be generated-

(a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(b) where the goods are being transported-

(i) under customs bond from an inland container depot or a container freight station to a custom sport, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal.

(6) The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, ***mutatis mutandis***, apply to an e-way bill generated under this rule.

Explanation.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax charged in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods."

5. The agenda note is placed before the GST Council for deliberations and approval.

Agenda Item 3(ii): Capacity based taxation and Special Composition Scheme in certain Sectors in GST.

In the existing GST legal framework, GST is a destination-based tax that is levied on supply of goods or services or both as per Article 366 (12A) of the Constitution of India.

2. However, on the basis of the observations made by certain states regarding the fall in the revenue realization after the roll out of the GST regime from certain evasion prone commodities, GST Council considered a need to examine the possibility to levy GST based on the capacity of manufacturing unit and introduce special composition schemes in such evasion prone sectors like pan masala and gutkha, etc and to explore any other suitable administrative or systemic mechanisms to plug the existing leakages in these sectors in order to augment the revenue realised from such sectors. Accordingly, GST council in its 42nd meeting held on 05th October, 2020 recommended for constitution of a Group of Ministers (GoM) for looking into the possibility of Capacity based taxation and Special Composition Scheme in certain Sectors in GST.

3. On the basis of the recommendations made by the GST Council, a Group of Ministers (GoM) was constituted under the Chairmanship of Shri Niranjan Pujari, Hon'ble Finance Minister of Odisha.

4. GoM submitted its report with various recommendations in Para 17 to 20, which are reproduced below:-

"17. The GoM deliberated the whole issue at length and examined all possible options for enhancing the compliance in the sector. The GOM identified certain additional compliance measures with respect to different aspects of production and supply, namely: -

a. Registration and Details of Machines: Any person who deals with pan masala, chewing tobacco and such other tobacco products, as specified, in any manner, shall in addition to his registration, take registration of the machines used in relation to such goods, in the manner as prescribed;

b. Thus, there would be a mandatory registration of each machine; this would require disclosure of the details like make and model of each machine, number of tracks, packing capacity of each track, total packing capacity of each machine, total number of machines installed in the factory;

c. Special Monthly Return: Maintaining of records and periodic filing of Special Monthly Return with details such as Machine wise production, Shift wise production, machine disposed off with all its details, machine added with all its details, Inputs procured and utilized in quantity and value terms, Product-wise and brand-wise details of clearance in quantity and value terms, shift-wise records of reading of electricity meters and DG set meters, waste generation stock, etc., in the manner as prescribed;

d. Certification of production capacity: Production capacity and quantity in unit per pouch/container shall be duly certified by registered Chartered Engineer.

e. Copy of declaration in respect of production capacity submitted to other department/agency/organization (if any), etc.;

f. Disclosure of details of non-working/partially working machines, etc.;

*g. If required, installation of 24*7 CCTV cameras by the manufacturers [it was however felt*

that this may be intrusive and be considered carefully];

h. Prescribing a heavy penalty for running any unregistered machine.

i. Gradually, the requirement of unique identification marking such as QR code or stamps, on each packet/pouch will be prescribed. The unique identifier shall enable determination of the following:
(a) the date, place and factory of manufacture;
(b) the machine used to manufacture;
(c) the production shift or time of manufacture;
(d) the product description, quantity and maximum retail sale price;
(e) any other relevant information, as may be prescribed.

18. The GoM also suggested that there is a need to further strengthen the tracking measures along the supply chain of these evasion-prone commodities through measures like mandatory e-invoicing [irrespective of turnover], mandatory e-way bill [irrespective of invoice value], mandatory FASTtag/RFID on the vehicle, vehicle tracking through Vahan app & GPS installation, priority alert in Eway Bills for such products, and mandatory e-invoicing including B2C invoices under GST for such suppliers. These features would help for stricter enforcement in these sectors.

19. The issue of fake invoicing and fraudulent exports thereof for claiming undue refund was also taken up for discussion by the GoM and it was suggested that for commodities like pan masala, gutkha, chewing tobacco, and similar other goods, the IGST refund route on exports be closed, similar to the recommendation made for Mentha Oil and if necessary, exports may only be allowed against LUT with the consequential refund of accumulated input tax credit.

20. The GoM simultaneously emphasized that the Ease of Doing Business shall not be hampered on account of above suggested measures, and they shall be implemented on system based interface, to the maximum extent feasible, in order to avoid any potential harassment of the concerned suppliers."

5. The said report of GoM was placed before the GST Council in its 49th meeting held on 18th February 2023, wherein the Council approved the said recommendations in-principle.

6. The recommendations of the GoM, as approved by the GST Council, were deliberated by the Law Committee in its meeting held on 10/11.04.2023 and 14/15.06.2023 for further course of action in respect of the above recommendations of the GoM. The Law Committee has accordingly given the following recommendations for further action in respect of the GoM report:

S.No.	Para of the GoM report	Text of the GoM recommendations	Recommendations of the Law Committee
1	17a.	**Registration and Details of Machines**: Any person who deals with pan masala, chewing tobacco and such other tobacco products, as specified,	The special provisions may be notified under Section 148 of the CGST Act for

		in any manner, shall in addition to his registration, take registration of the machines used in relation to such goods, in the manner as prescribed.	registration of machines and special monthly return by the manufacturers of pan masala, gutkha and chewing tobacco. There is no need for any separate amendment in CGST Act or CGST Rules. Draft Notification recommended by the Law Committee is enclosed as **Annexure-I of this agenda note.** Law Committee also recommended that the said procedure should only be implemented through a system based interface on the portal.
2	17b.	Thus, there would be a mandatory registration of each machine; this would require disclosure of the details like make and model of each machine, number of tracks, packing capacity of each track, total packing capacity of each machine, total number of machines installed in the factory.	
3	17c.	**Special Monthly Return**: Maintaining of records and periodic filing of Special Monthly Return with details such as Machine wise production, Shift wise production, machine disposed off with all its details, machine added with all its details, Inputs procured and utilized in quantity and value terms, Product-wise and brand-wise details of clearance in quantity and value terms, shift-wise records of reading of electricity meters and DG set meters, waste generation stock, etc., in the manner as prescribed;	
4	17d	**Certification of production capacity**: Production capacity and quantity in unit per pouch/container shall be duly certified by registered Chartered Engineer.	The same may be incorporated as supporting document to be uploaded on the portal during registration of machine. The procedure for the same in incorporated in the Notification for Special procedure under section 148 of CGST Act, as enclosed as **Annexure-I of this agenda note.**
5	17e	Copy of declaration in respect of production capacity submitted to other department/ agency/ organization (if any), etc.	The same is made part of the special procedure as per the notification under section 148, enclosed as **Annexure-I of this agenda note**.
6	17f	Disclosure of details of non-working/partially working machines, etc.;	The registered person dealing in manufacturing of pan masala, guthka and chewing tobacco may be required to maintain a daily shift wise record of production by each machine in **FORM-III, as detailed in the Notification in**

			Annexure I. Accordingly. in case any machine is not working or is partially working temporarily will get captured in the said record..
7	17g	If required, installation of 24*7 CCTV cameras by the manufacturers [it was however felt that this may be intrusive and be considered carefully]	Law Committee recommended that this can be considered later on.
8	17h	Prescribing a heavy penalty for running any unregistered machine.	Law Committee felt that a specific penalty provision needs to be incorporated in the CGST Act for non-declaration of machines by such manufacturers in addition to the penalty provisions specified in Section 122 of CGST Act. Law Committee accordingly proposed insertion of a new section 122A in CGST Act, the draft of which is placed at **Annexure-II** enclosed with this agenda note**.** Law Committee also recommended that till **the** time the proposed law amendment comes into effect, penalty can be imposed by invoking provisions of Section 125 of the CGST Act.
9	17i	Gradually, the requirement of unique identification marking such as QR code or stamps on each packet/pouch will be prescribed. The unique identifier shall enable determination of the following: (a) the date, place and factory of manufacture; (b) the machine used to manufacture; (c) the production shift or time of manufacture; (d) the product description, quantity and maximum retail sale price; (e) any other relevant information, as may be prescribed.	Law Committee recommended that these recommendations of GoM may be taken up at a later stage after the implementation of the special procedure recommended in above paras, as they involve detailed examination of their technical feasibility on the system.
10	18	The GoM also suggested that there is a need to further strengthen the tracking measures along the supply chain of these evasion-prone commodities through measures like mandatory e-	

		invoicing[irrespective of turnover],mandatory e-way bill [irrespective of invoice value], mandatory FAST tag/RFID on the vehicle, vehicle tracking through Vahan app & GPS installation, priority alert in E-Way Bills for such products, and mandatory e-invoicing including B2C invoices under GST for such suppliers. These features would help for stricter enforcement in these sectors.	
11	19	The issue of fake invoicing and fraudulent exports thereof for claiming undue refund was also taken up for discussion by the GoM and it was suggested that for commodities like pan masala, gutkha, chewing tobacco, and similar other goods, the IGST refund route on exports be closed, similar to the recommendation made for Mentha Oil and if necessary, exports may only be allowed against LUT with the consequential refund of accumulated input tax credit.	Law Committee recommended that to implement the said recommendation of GoM, the amendment to Section 16 of IGST Act made through Section 123 of Finance Act 2021 (which provided for enabling provision for restricting IGST Refund route in respect of certain supplies or suppliers), may be notified at the earliest. Along with the same, all goods or services may be notified, which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax, except for the goods recommended by the GoM in its report on which the IGST refund route will not be available. Draft notification in this regard is placed at **Annexure-III,** enclosed with this agenda note**.**
12	20	The GoM simultaneously emphasized that the Ease of Doing Business shall not be hampered on account of above suggested measures, and they shall be implemented on system based interface, to the maximum extent feasible, in order to avoid any potential harassment of the concerned suppliers	In accordance with the said recommendation of GoM, Law Committee recommended that the registration of machines and filing of special monthly return may be done on the common portal, without manual interface.

7. Further, Law Committee has also given the following recommendations with respect to the implementation of above suggestions:

- *GSTN to examine the technical modalities required for implementation of the proposal.*

- *It was felt by the members of Law Committee that the suggested procedure creates additional compliance requirements, effectiveness of which needs to be reviewed after a period of one year.*

- *Further measures such as stamping, mandatory e-invoicing [irrespective of turnover], mandatory e-way bill [irrespective of invoice value], mandatory FAST tag/RFID on the vehicle, trace and track mechanism etc as recommended by GoM may be examined in subsequent phases.*

8. Accordingly, the agenda note, along with annexures, is placed before the GST Council for deliberation and approval.

****

ANNEXURE-I

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (I)]

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

NOTIFICATION

NO. XX/2023–CENTRALTAX

New Delhi, the XXXX,2023

S.O.(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act,2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure to be followed by a registered person engaged in manufacturing of the goods, the description of which is specified in the corresponding entry in column (3) of the Schedule appended to this notification, and falling under the tariff item, sub- heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule.

Details of Packing Machines

2.1 All the existing registered persons engaged in manufacturing of the goods mentioned in Schedule to this notification shall furnish the details of packing machines being used for filling and packing of pouches or containers in **FORM SRM-I**, within 30 days of issuance of this notification, electronically on the common portal**:**,

FORM SRM-I

S.No. **(1)**	Make & Model No. of the Machine (including the name of manufacturer) **(2)**	Date of Purchase of the Machine **(3)**	Address of place of business where installed **(4)**	No. of Tracks **(5)**	Packing Capacity of each track **(6)**	Total packing capacity of machine **(7)**	Electricity consumption by the machine per hour **(8)**	Supporting Documents **(9)**	Unique ID of the machine (to be auto populated) **(10)**
								<<Capacity certificate from Chartered Engineer>>	

2.2 Any person intending to manufacture goods as mentioned in Schedule to this notification, and who has been granted registration after the issuance of this notification, shall furnish the details

of packing machines being used for filling and packing of pouches or containers in **FORM SRM-I** on the common portal, within fifteen days of grant of such registration.

2.3 The details of any additional filling and packing machine being installed in the registered place of business shall be furnished, electronically on the common portal, by the said registered person within 24 hours of such installation in **FORM SRM-IIA.**

2.4 Upon furnishing of such details in **FORM SRM-I** or **FORM SRM-IIA**, a unique ID shall be generated for each machine, whose details have been furnished by the registered person, on the common portal.

2.5 In case, the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organization, the same shall be furnished by the said registered person in **FORM SRM-IA** on the common portal, within fifteen days of filing said declaration or submission:

Provided that where the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organization, before the issuance of this notification, the same shall be furnished by the said registered person in **FORM SRM-IA** on the common portal, within thirty days of issuance of this notification.

FORM SRM-IA

S.No **(1)**	Name of Govt. Department/ any other agency or organization **(2)**	Type of Declaration/ Submission **(3)**	Details of Declaration/Submission **(4)**
		<<copy of declaration to be uploaded on the portal>>	

2.6 The details of any existing filling and packing machine removed from the registered place of business shall be furnished, electronically on the common portal, by the said registered person within 24 hours of such removal in **FORM SRM-IIB.**

FORM SRM-IIA

[Details of installation of additional machine(s)]

S. No. **(1)**	Make & Model No. of the Machine (including the name of	Date of Purchase of the Machine **(3)**	Date of installation of the Machine **(4)**	Address of place of business where installed **(5)**	No. of Tracks **(6)**	Packing Capacity of each track **(7)**	Total packing capacity of machine **(8)**	Electricity consumption by the machine per hour	Supporting Documents **(10)**	Unique ID of the machine (to be auto populated) **(11)**

	manufacturer) **(2)**							**(9)**		
									<<Capacity certificate from Chartered Engineer>>	

FORM SRM-IIB
[Details of removal of the existing machine(s)]

S.No **(1)**	Unique ID of the machine **(2)**	Make & Model No. of the Machine <<auto-populated>> **(3)**	Date of Purchase of the Machine <<auto-populated>> **(4)**	Address of place of business from where the machine is removed. <<auto-populated>> **(5)**	No. of Tracks <<auto-populated>> **(6)**	Packing Capacity of each track <<auto-populated>> **(7)**	Total packing capacity of machine <<auto-populated>> **(8)**	Date of Removal **(9)**	Reasons for removal/disposal of the machine. **(10)**
									<<Sold to third party>> <<Scrap>>

Additional records to be maintained by the registered persons manufacturing the goods mentioned in the Schedule

2.7 Every registered person engaged in manufacturing of goods mentioned in Schedule shall keep a daily record of inputs being procured and utilized in quantity and value terms along with the details of waste generated as well as the daily record of reading of electricity meters and DG set meters in a format as specified in **FORM SRM-IIIA** in each place of business.

2.8 Further, the said registered person shall also keep a daily shift-wise record of Machine-wise production, product-wise and brand-wise details of clearance in quantity and value terms in a format as specified in **FORM SRM-IIIB** in each place of business.

FORM SRM-IIIA
Inputs Register

(1)	HSN of the Input **(2)**	Description of the Input **(3)**	Unit quantity **(4)**	Opening Balance (in units) **(5)**	Quantity procured (in units) **(6)**	Quantity procured (value in Rs) **(7)**	Qty Consumed (in units) **(8)**	Closing Balance (in units) **(9)**	Waste generated in respect of the said input (qty) (in units) **(10)**
Day1	HSN 1								
	HSN 2								
	HSN 3								
	⋮								
	HSN n								
Day 2									
.....									
Last Day									

of Month									

Day 1	***Electricity Reading***					
	Electricity meter reading			***DG set meter reading***		
	Initial Meter Reading	*Final Meter Reading*	*Consumption (kwH)*	*Initial Meter Reading*	*Final Meter Reading*	*Consumption (kwH)*
Last Day of Month						

FORM SRM-IIIB
Production Register

		Brand B1											***Brand B2***	***Brand Bn***	
		Machine M1(Mention Unique ID of the machine)								***M2***	***Mn***	***Total of all machines***			
		Total no. of Pouch P1 packed	*Unit Value Of Pouch P1*	*Total Value Of Pouches P1 Packed(V1) (in Rs)*	*Total no. of Pouch ... Pn packed*	*Value Of Pouch ... Pn*	*Total Value Of Pouches Pn Packed (Vn) (in Rs)*	*Total No. of pouches Packed by Machine M1 (P1+P2 +..Pn)*	*Total value of Pouches packed By machine M1 (in Rs) (V1+V2 +..Vn)*	*...*	*---*	*Total Production value of Brand B1 by all machines (Rs)*	.....	.....	
Day 1	*Shift 1 00:00 to 00.00 hrs*														
	Shift 2 00:														

	00 to 00.00 hrs														
	Shift 3 00:00 to 00.00 hrs														
	Total for Day 1														
Day 2															
....Dayn of															
	Total for the Month														

Special Monthly Statement

2.9 The said registered person shall submit a special statement for each month in **FORM SRM-IV** on the common portal, on or before the tenth day of the month succeeding such month.

FORM SRM-IV

Monthly Statement of Inputs used and the final goods produced by the manufacturer of goods specified in Schedule to Notification No.XX dated XXX

PART-A

		HSN of the Input (2)	***Description of the Input (3)***	***Unit quantity***	***Opening Balance (in units) (4)***	***Quantity procured (in units) (5)***	***Quantity procured (value in Rs) (6)***	***Qty Consumed (in units) (7)***	***Closing Balance (in units) (8)***	***Waste generated qty (in units) (9)***
Total for Month	***HSN1***									
	HSN2									
	HSN3									
	…….									
	HSNn									

	Electricity Reading					
	Electricity meter reading			***DG set meter reading***		
	Initial Meter Reading	*Final Meter Reading*	*Consumption (kwH)*	*Initial Meter Reading*	*Final Meter*	*Consumption (kwH)*

Total for the Month						

Statement of production of goods

PART-B

	Brand B1														***Brand B2***	***Brand Bn***
	M1									***M2***	***Mn***	***Total of all machines***				
	Total no. of Pouch P1 packed	*MRP Value Of Pouch P1*	*Total Value Of Pouches P1 Packed(V1) (in Rs)*	*Total no. of Pouch Pn packed*	*Value Of Pouch Pn*	*Total Value Of Pouches Pn Packed (Vn) (in Rs)*	*Total No. of pouches Packed by Machine M1 (P1+P2+..Pn)*	*Total value of Pouches packed By machine M1 (in Rs) (V1+V2+..Vn)*		*...*	*---*	*Total Production value of Brand B1 by all machines (Rs)*			.....	.....
	To															

	tal fo r th e M on th													

Schedule

S.No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
1.	2106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube) – bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube) – bearing a brand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name
6.	2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name
12	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco
17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff
19.	2403 99 60	Tobacco extracts and essence bearing a brand name
20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco 'Gutkha'
23.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
24.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name

Explanation.–

(1) In this Schedule, "tariff item", "heading", "sub-heading" and "Chapter" shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

(3) For the purposes of this notification, the phrase "brand name" means brand name or trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

3. This notification shall come into force with effect from the xxth day of XXX, XXX.

[F.No.CBIC-20013/1/2023-GST]

(Alok Kumar)
Director

ANNEXURE-II

122A. "Notwithstanding anything to the contrary contained in this Act, where any person, who is engaged in the manufacture of goods in respect of which any special procedure relating to registration of machines has been mandated under section 148, acts in contravention of the said special procedure, shall, in addition to any penalty that is paid or is payable by him under chapter XV or Chapter XIX of this Act**,** be liable to a penalty equal to an amount of one lakh rupees for every machine not so registered and every such machine shall be liable to seizure and confiscation:

Provided that the said machine shall not be confiscated where-

(a) the penalty so imposed is paid, and
(b) the said machine is registered in accordance with the said special procedure, within three days of the order of penalty being communicated to the person in default."

ANNEXURE-III

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (I)]

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

Notification No. XX/2023 – Integrated Tax

New Delhi, the ..thJune, 2023

Notification of a class of goods or services which may be exported on payment of integrated tax under Section 16 of IGST Act.

In exercise of the powers conferred by sub-section (4) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereafter referred to as the "said Act"), the Central Government on the recommendations of the Council, hereby notifies all goods or services, except the following goods, as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid:

TABLE

S.No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
1.	2106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube) – bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube) – bearing a brand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name
6.	2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name

12	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco
17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff
19.	2403 99 60	Tobacco extracts and essence bearing a brand name
20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco 'Gutkha'
23.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
24.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name
25.	3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Following essential oils other than those of citrus fruit namely: - (a) Of peppermint (Mentha piperita); (b) Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis

Explanation. -

(i) In this Table, "tariff item", "sub-heading", "heading" and "chapter" shall mean respectively a tariff item, sub-heading, heading and chapters as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(ii) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

(iii) For the purposes of this notification, the phrase "brand name" means brand name or trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

2. This notification shall come into force with effect from the xxth day of XXX, XXX.

[F.No….]
(Name)
Designation

Agenda Item 3(iii) : Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.

References have been received from trade requesting for clarification regarding charging of interest under section 50(3) of the CGST Act, 2017 in the cases where IGST credit has been wrongly availed by a registered person. Clarification is being sought as to whether such wrongly availed IGST credit would be considered to have been utilized for the purpose of charging of interest under section 50(3) of CGST Act, read with rule 88B of CGST Rules, 2017, in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, however, the total balance of input tax credit in the electronic credit ledger of the registered person **under the heads of IGST, CGST and SGST taken together** remains more than such wrongly availed IGST credit, at all times, till the time of such reversal of the said wrongly availed IGST credit.

1.1. To elaborate further, such a situation may arise when IGST credit has been availed and utilized in the manner/order prescribed under the provisions of GST law i.e. the registered person is required to first utilize the IGST credit to set off the tax liability following the prescribed order of utilization as per provision of section 49A of CGST Act and later, it is realized that such IGST credit was wrongly availed and is required to be reversed as per the provisions of GST law. However, before the reversal of such credit, though the available balance of IGST credit in electronic credit ledger may have fallen below the amount of such wrongly availed IGST credit, the total input tax credit balance available in the electronic credit ledger, **under the heads of IGST, CGST and SGST taken together,** remains more than such wrongly availed IGST credit, at all times, till the time of such reversal of wrongly availed IGST credit. In such case, the reversal of IGST will happen first from balance of IGST credit available in electronic credit ledger and then remaining from CGST and SGST available in Electronic credit ledger. The issue arises as to whether interest under section 50(3) shall be payable in such cases or not.

2. Relevant legal provisions of CGST Act and CGST Rules:

2.1 Sub-section (3) of section 50 of the CGST Act, 2017, which provides for charging of interest on wrongly availed and utilised input tax credit, is reproduced as under:

> *"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."*

2.2. Further, **Sub-rule (3) of Rule 88 B** which provides for the manner of calculation of interest on the amount of input tax credit wrongly availed and utilized, reads as follows:

> ***"Rule 88B. Manner of calculating interest on delayed payment of tax.-***
>
> *(1)…*
>
> *(2)….*

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation 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 said 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 utilised, when the ***balance in the electronic credit ledger*** *falls below the amount of input tax credit wrongly availed, and the extent of such utilisation 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 utilisation 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 e*lectronic *credit ledger falls below the amount of input tax credit wrongly availed, in all other cases."*

2.3. Other relevant sections of the CGST Act, 2017 and rules of CGST Rules, 2017 are given below:

Section 2 (63)

"input tax credit" *means the credit of* ***input tax***;

Section 2 (62)

'"input tax*" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes–*

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;'

Section 2(46):

*"(46) "**electronic credit ledger**" means the electronic credit ledger referred to in sub-**section (2) of section 49**;"*

Section 49 (2):

*"(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with **section 41**, to be maintained in such manner as may be prescribed."*

Section 41:

Section 41. Availment of input tax credit

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

***Provided** that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.]*

Rule 86:

"Rule 86. Electronic Credit Ledger.-

(1) The electronic credit ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.

(2) The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B.
(3) ……"

Section 49A

Section 49A. Utilisation of input tax credit subject to certain conditions.-

Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

Rule 88A

Rule 88A. Order of utilization of input tax credit.-

Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order:

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

2.4. As per Section 20 of the IGST Act, 2017, subject to the provisions of IGST Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act, inter-alia relating to payment of tax shall, *mutatis mutandis*, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act.

3. The matter has been examined. From the plain reading of rule 88B of CGST Rules, it is noted that interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50 of CGST Act for the period starting from the date of utilization of such credit till the date of reversal thereof or payment of tax in respect of such amount. Further, as per Explanation to rule 88B of CGST Rules, wrongly availed input tax credit shall be considered to be utilized when the balance in the electronic credit ledger falls below the said amount of wrongly availed input tax credit, and will be considered to be utilized to the extent the balance in electronic credit ledger falls below the said amount of wrongly availed credit. The intent behind such a provision was to charge interest in cases where the registered person would have been required to pay amount of such wrongly availed credit in cash, had this credit not been wrongly availed by the said person. In cases where IGST credit has been wrongly availed and where though sufficient balance may not be available under IGST head of electronic credit ledger due to requirement of order of utilization of such credit provided under section 49A of CGST Act and rule 88A of CGST Rules, however, sufficient balance may have been available under

CGST and SGST heads of electronic credit ledger at all times. In such cases, reversal of credit in respect of the amount of wrongly availed IGST credit, if required, could have been done from electronic credit ledger at all times, without requiring payment of the said amount in cash. Accordingly, on the basis of this, **it appears that for the calculation of amount of input tax credit wrongly availed and utilized as referred in Rule 88B of CGST Rules, no head wise distinction in electronic credit ledger has been made, rather it is the total input tax credit available in electronic credit ledger, including under the heads of IGST, CGST and SGST, that has to be considered for calculation of interest under rule 88B of CGST Rules** and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit**.**

3.1. Thus, it appears that the **'balance'** mentioned in Rule 88B of CGST Rules in the phrase "**balance in electronic credit ledger has fallen below the amount of input tax credit wrongly availed"** does not imply "balance available after utilization in respective separate head" rather it means balance available in Electronic credit ledger including **all the three heads, i.e. IGST, CGST and SGST**.

3.2. The above view is in consonance with the recommendation made by the Council for charging interest on net cash basis, based on which retrospective amendments have been made in section 50 of CGST Act. Further, this is also in consonance with the sub-section (1) of section 50 of CGST Act and sub-rule (1) of rule 88B which provide for the payment of interest in case of late filing of return for a certain period. Sub-rule (1) of rule 88B provides that "*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."* This shows that the intent is not to charge interest when the reversal of such wrongly availed input tax credit or the equivalent tax payment could have been made at all times by using available input tax credit in electronic credit ledger including cross utilization of different heads of IGST, CGST and SGST as allowed under the provisions of GST law. If the balance of input tax credit available in electronic credit ledger, **under the heads of IGST, CGST and SGST taken together,** has been not less that such wrongly availed IGST credit at all times before such reversal, then it implies that taxpayer has always been in the position to reverse such wrongly availed credit by using available credit in his electronic credit ledger without requiring a debit from cash ledger, and therefore, as per intent of GST Council, there should be no interest liability on the said registered person on this account.

3.3. In view of above, it may be concluded that, **in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and upto such reversal, the balance of input tax credit (ITC) including in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of input tax credit (ITC) including under the heads of IGST, CGST and SGST of electronic credit ledger taken together falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent of the total balance in electronic credit ledger under heads of IGST, CGST and SGST**

falls below such amount of wrongly availed IGST credit, and will attract interest as per section 50(3) of CGST Act read with section 20 of IGST Act and sub-rule (3) of rule 88B of CGST Rules. The same may be clarified through a circular.

3.4 It may also be noted that as per proviso to **section 11 of Goods And Services Tax (Compensation To States) Act, 2017,** input tax credit in respect of compensation cess on supply of goods and services leviable under section 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST/ SGST/ IGST heads and/ or reversals of credit under the said heads. Accordingly, it may be clarified that credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

4. The matter was deliberated by the Law Committee in its meeting held on 14 & 15.06.2023. The Law Committee recommended that the same may be clarified through a circular (draft circular enclosed as **Annexure A** with this agenda note).

5. The agenda is placed before the GST Council for deliberations and approval.

Annexure A

Circular No. xx/xx//2023-GST

File No. CBEC-20006/06/2023-GST

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes & Customs

GST Policy Wing

*****

New Delhi, Dated June, 2023

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 charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.

References have been received from trade requesting for clarification regarding charging of interest under sub-section (3) of section 50 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") in the cases where IGST credit has been wrongly availed by a registered person. Clarification is being sought as to whether such wrongly availed IGST credit would be considered to have been utilized for the purpose of charging of interest under sub-section (3) of section 50 of CGST Act, read with rule 88B of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules"), in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, however, the total balance of input tax credit in the electronic credit ledger of the registered person under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of such reversal of the said wrongly availed IGST credit.

2. Issue has been examined 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 as under:

S. No.	Issue	Clarification

1.	In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.	Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit. Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and upto such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of input tax credit (ITC), under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per sub-section (3) of section 50 of CGST Act, read with section 20 of Integrated Goods and Services Tax Act, 2017 and sub-

		rule (3) of rule 88B of CGST Rules.
2.	Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.	As per proviso to section 11 of Goods and Services Tax (Compensation To States) Act, 2017, input tax credit in respect of compensation cess on supply of goods and services leviable under section 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads. Accordingly, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

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(iv): Issues pertaining to interpretation of Section 10 of IGST Act, 2017

Reference is invited to Agenda item 7(iii) of the 37th GST Council Meeting (**Annexure-A**) wherein an agenda was placed before the GST Council for deliberation and approval of draft circular for clarifying the interpretation of section 10 of the IGST Act, 2017 for determining the place of supply in cases where the goods are purchased over the counter (on OTC) basis in one state and thereafter transported to another state by the recipient. The issue was deliberated by the GST Council and the Council recommended the following in respect of the said agenda note:

> *"20.2 The Hon'ble Chairperson felt that the issue should be looked into afresh by the Law Committee as the destination principle was being questioned and the entire edifice of GST was based on it. She requested the States to give their opinion in writing along with reasons thereof for consideration of the issue afresh in the Law Committee.*
>
> *21. For Agenda item 7(iii), the Council recommended to* ***refer the agenda back to the Law Committee for considering the issue afresh after obtaining opinion of the States in writing along with reasons thereof****."*

2. In order to implement the recommendations of the Council, GST Council Secretariat requested all the States to offer their comments vide multiple emails /letters. GST Council Secretariat has forwarded the comments of the States of Punjab, Gujarat, Himachal Pradesh, Chhattisgarh, Goa, Haryana, Meghalaya & Nagaland and the UT of Chandigarh on the said agenda note.

3. As directed by the GST Council, after obtaining opinion of the States, Law Committee considered the issue afresh. Law Committee deliberated on the issue in its meeting held on 02.02.2022, 09.02.2022, 12.10.2022, 10/11.04.2023 and 24.05.2023. The Law Committee agreed that GST is premised on the principle of destination-based consumption tax wherein tax should flow to the State or Union Territory where the goods or services are consumed. Even in the over the counter sale, where the goods are handed over to the customer, it does not imply that the goods are being consumed there. The address of customer which is on record should signify the place of destination as well as consumption of the said goods. It is because of this reason that the provision making it mandatory for the suppliers to record the address of the customer where the supply is of amount greater than Rs 50,000/- , has been incorporated in the CGST Rules as well. Law Committee further noted that if any other interpretation is adopted, it would result in the breaking of the ITC chain as the registered person might not get ITC for the supplies that he has procured from the other State, the delivery of which has been taken on the spot rather than being transported (for B2B transactions).

4. Law Committee also decided that there is no need for any amendment in section 10 of IGST Act with regard to supplies made to registered persons. For the supplies made to unregistered persons, Law Committee approved insertion of a new clause (ca) after clause (c) of sub-section (1) of section 10 of the IGST Act, 2017. The said clause is reproduced below:

> "*(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything to the contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the*

said supply and be the location of the supplier where the address of the said person is not recorded in the invoice.

***Explanation**.- For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person."*

5. Accordingly, the agenda note is placed before the GST Council for approval.

Annexure A

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

New Delhi, the ____ September, 2019

To

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

The Principal Director Generals / Director Generals (All)

Madam / Sir,

Subject: - Issues pertaining to interpretation of Section 10 of the IGST Act, 2017 – reg.

Representations have been received from the trade and industry seeking clarification on issues with respect to place of supply in case where goods are purchased over the counter (on OTC basis) in one State and thereafter transported to another State by the recipient.

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

2.1 It has been reported that in case where the recipient goes to a State other than the State where such recipient is registered or where the recipient is not registered and the address of the recipient is required to be declared in the tax invoice under rule 46(e) or rule 46(f) of the CGST Rules and purchases goods over the counter (OTC) which are then transported by such recipient to the State wherein he is registered or to the address that has been declared in the tax invoice, as the case may be, practice of treating the same as intra-State supply by treating the place of delivery by the supplier as the place of supply is prevalent.

2.2 It is seen that this situation is squarely covered under the provisions contained in clause (a) of sub-section (1) of Section 10 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") which provides that the place of supply of goods, where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, shall be the location of the goods at the time at which the movement of goods **terminates** for delivery to the recipient.

2.3 It has been informed that even though the goods are supplied on OTC basis but the supply involves further movement of goods **which is arranged by the recipient, the expression "movement of goods terminates" would mean the place where the movement of goods**

terminates when the goods reach the place of registration of the recipient or to the address that has been declared in the tax invoice, as the case may be. It is, accordingly, clarified that the place of supply in case of such supplies, i.e. where the recipient is registered or the address declared in the tax invoice (in case such recipient is not registered) in a State other than the State in which the supplier is located, shall be determined in accordance with the provisions contained in clause (a) of sub-section (1) of section 10 of the IGST Act. Accordingly, such supplies would be treated as inter-State supplies in accordance with the provisions contained in sub-section (1) of section 7 of the IGST Act. It is further clarified that the supplier would be liable to pay integrated tax in such cases.

2.4 However, where the supply is to an unregistered person and where the recipient's address is not available on record, the place of supply would be determined in accordance with the provisions contained in clause (c) of sub-section (1) of section 10 of the IGST Act. The place of supply in such cases would be the location of goods at the time of delivery to the recipient. Accordingly, such supplies would be treated as intra-State supplies in accordance with the provisions contained in sub-section (1) of section 8 of the IGST Act. It is further clarified that the supplier would be liable to pay Central tax and State tax / Union territory tax in such cases.

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

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

(Yogendra Garg)
Principal Commissioner (GST)

Agenda Item 3(v): Clarification with respect to applicability of e-invoice w.r.t supplies made by a registered person to Government Departments or establishment/ Government agencies / local authorities/ PSUs registered solely for the purpose of TDS

Electronic invoicing system was introduced from 01.10.2020 for taxpayers with turnover of more than Rs. 500 crore 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 Rs. 100 crore from 01.01.2021. Vide notification No. 05/2021-CT dated 08.03.2021, the same was extended for taxpayers with turnover of more than Rs. 50 crore from 01.04.2021. Further, vide notification No. 01/2022-CT dated 24.02.2022, the same was extended for taxpayers with turnover of more than Rs. 20 crore from 01.04.2022. Vide notification No. 17/2022-CT dated 01.08.2022, the same was extended for taxpayers with turnover of more than Rs. 10 crore from 01.10.2022. Now, vide notification No. 10/2023-Central Tax dated 10.05.2023, it has been proposed to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Cr from 01.08.2023.

2. Representations have been received seeking clarification with respect to applicability of e-invoice under rule 48(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") w.r.t supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to the Government Departments or establishments / Government agencies / local authorities/ PSUs registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act").

3. The issue has been examined. "Registered Person" as defined under sub-section (94) of Section 2 of the CGST Act is a person who is registered under Section 25 of the CGST Act but does not include a person having a Unique Identity Number (UIN). Government Departments/ Offices/ PSUs, who are required to deduct tax at source as per provisions of Section 51 of the CGST Act, are liable for compulsory registration in accordance with section 24(vi) of the CGST Act. Therefore, Government Departments/ Offices registered solely as tax deductors at source are to be treated as registered persons under the GST law and thus supplies from a registered person to a government entity falls under the category of B2B supplies. Thus, in case a registered person is supplying taxable goods and services to Government Departments/Offices and his turnover exceeds the prescribed threshold for generation of e-invoice, he will be liable for generation of e-invoice for such supplies.

4. Further, as per Question 13 of Frequently Asked Questions (Version 1.4 dated 30.03.2021) available on GST Portal, it has been clarified that e-invoicing is applicable for supplies by notified persons to Government Departments:

> "***13. Whether e-invoicing is applicable for supplies by notified persons to Government Departments?***
> *e-invoicing by notified persons is mandated for supply of goods or services or both to a registered person. Thus, where the Government Department doesn't have any registration under GST (i.e. not a 'registered person'), e-invoicing doesn't arise. However, where the Govt. department is having a GSTIN (as entity supplying goods/services/ deducting TDS), the same has to be mentioned as recipient GSTIN in the e-invoice."*

5. Law Committee deliberated on the issue in its meeting held on 31.05.2023 and recommended that it may be clarified through a circular that, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, are required to issue e-invoices for the supplies made to such Government Departments or establishments / Government agencies / local authorities / PSUs, etc under rule 48(4) of CGST Rules. Accordingly, Law Committee approved a draft Circular which is enclosed as **Annexure-A to this agenda note**.

6. The agenda note along with the draft circular (enclosed as **Annexure-A**) is placed before the GST Council for deliberation and approval.

Annexure-A

Circular No. xx/xx/xxxx-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 XXth May, 2023

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 pertaining to e-invoice-reg.

Representations have been received seeking clarification with respect to applicability of e-invoice under rule 48(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") w.r.t supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act").

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 CGST Act, hereby clarifies the issue as under:

S. No.	Issue	Clarification
1.	Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government	Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct tax at source as per provisions of section 51 of the CGST/SGST Act, are liable for compulsory registration in accordance with section 24(vi) of the CGST Act. Therefore, Government Departments or establishments/

	agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act?	Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to be treated as registered persons under the GST law as per provisions of clause (94) of section 2 of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4) of CGST Rules.

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(vi): Clarification on refund related issues

References have been received from the field formations seeking clarification on various issues relating to GST refunds, which need to be immediately addressed to ensure the uniformity in the implementation of the provisions of law across field formations. The issues raised are enumerated as under:

2. Refund of accumulatedinput tax credit under Section 54(3) on the basis of that available as per FORM GSTR 2B: -

2.1 Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020 mentions that refund of accumulated input tax credit (ITC) is restricted to the input tax credit as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Para 5 of the said circular is reproduced below:

> ***"5. Guidelines for refunds of Input Tax Credit under Section 54(3):***
>
> ***5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.***
>
> ***5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent."***

2.2 However, in view of the insertion of clause (aa) in sub-section (2) of section 16 of the CGST Act, 2017 w.e.f. 1st January, 2022 vide Notification No. 39/2021-C.T. dated 21.12.2021, and the amendment in Rule 36(4) of CGST Rules, 2017 w.e.f. 1st January, 2022 vide Notification No. 40/2021- CT dated 29.12.2021, references have been received as to whether the refund of the accumulated input tax credit under section 54(3) of CGST Act shall be admissible on the basis of the input tax credit as reflected in FORM GSTR-2A or on the basis of that available as per FORM GSTR-2B of the applicant.

2.3 The issue has been examined. It has been noticed that since availment of input tax credit has now been linked with FORM GSTR-2B w.e.f. 01.01.2022, availability of refund of the accumulated input tax credit under section 54(3) of CGST Act for a tax period is required to be restricted to input tax credit as per those invoices, the details of which are reflected in FORM GSTR-2B of the applicant for the said tax period or for any of the previous tax periods and on which the input tax credit is available to the applicant. Accordingly, para 36 of Circular No. 125/44/2019-GST dated 18.11.2019, which was earlier modified

vide Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, may be further modified to this extent. Consequently, Circular No. 139/09/2020-GST dated 10.06.2020, which provides for restriction on refund of accumulated input tax credit on those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant, may also be modified accordingly.

2.4 As the said amendments in section 16(2) (aa) of CGST Act and Rule 36(4) of CGST Rules have been brought into effect from 01.01.2022, it is proposed that the said restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per FORM GSTR-2B for the said tax period or for any of the previous tax periods, may be made applicable for the refund claims for the tax period of January 2022 onwards. However, in cases where refund claims for a tax period from January 2022 onwards have already been disposed of by the proper officer, in accordance with the extant guidelines in force, the same may not be reopened because of the clarification proposed to be issued.

2.5 Law Committee deliberated on the issue in its meeting held on 10.04.2023 & 11.04.2023 and approved the above proposal.

3. **Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. 125/44/2019-GST dated 18.11.2019.**

3.1 Para 7 of Circular No. 125/44/2019 dated 18.11.2019 states that:

> ***"Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."***

3.2 In accordance with the same, the following undertaking was inserted in FORM GST RFD 01:

> ***"I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 read with sub-section (2) of section 42 of the CGST/SGST Act have not been complied with in respect of the amount refunded."***

3.3 It may be noted that Section 42 of CGST Act, 2017 has been omitted w.e.f. 1st October, 2022 vide Notification No. 18/2022-CT dated 28.09.2022. Further, an amendment has also been made in Section 41 of the CGST Act, 2017, wherein the concept of provisionally accepted input tax credit has been done away with. Besides, FORM GSTR-2 and FORM GSTR-3 have also been omitted from CGST

Rules, 2017. In view of this, reference to section 42, FORM GSTR-2 and FORM GSTR-3 needs to be deleted from the said para in the Circular as well as from the said undertaking.

3.4 It is, therefore, proposed that the para 7 of Circular No. 125/44/2019 dated 18.11.2019 & undertaking in FORM GST RFD 01 maybe amended as follows:

> **Para 7:** *"~~Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, t~~The applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 ~~read with sub-section (2) of section 42~~of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."*
>
> ***Undertaking in FORM GST RFD 01:-*** *"I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 ~~read with sub-section (2) of section 42~~of the CGST/SGST Act have not been complied with in respect of the amount refunded."*

3.5 Consequentially, Annexure-A to the Circular No. 125/44/2019-GST dated 18.11.2019 also needs some modification as below:

i. "Undertaking in relation to sections 16(2)(c) and section 42(2)" wherever mentioned in the column Declaration/Statement/Undertaking/Certificates to be filled online needs to be replaced by "Undertaking in relation to sections 16(2)(c)".

ii. "Copy of GSTR-2A of the relevant period" wherever required as supporting documents to be additionally uploaded needs to be removed/ deleted.

iii. "Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period" wherever required as supporting documents to be additionally uploaded needs to be removed/ deleted.

3.6 Law Committee deliberated on the issue in its meeting held on 10/11.04.2023 and on 24.05.2023 and approved the abovesaid proposals.

4. **Clarification regarding determination of value of adjusted total turnover in the formula under Rule 89(4):**

4.1 References have been received from trade and field formations seeking clarification regarding calculation of "adjusted total turnover" under sub-rule (4) of rule 89 of CGST Rules, in view of insertion of Explanation in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-Central Tax dated 05.07.0222. Clarification is being sought as to whether value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of CGST Rules for the purpose of calculation of "adjusted total turnover" in the formula under the said sub-rule.

4.2 In this regard, it is worthwhile to mention that consequent to amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, Circular No. 147/03/2021-GST dated 12.03.2021 was issued which *inter alia* states that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of rule 89 of CGST Rules. The said Circular was issued to clarify *inter alia* that for the purpose of sub-rule (4) of rule 89, the value of export/ zero rated supply of goods to be included while calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-rule.

4.3 On similar lines, it is proposed to clarify that consequent to Explanation having been inserted in sub-rule (4) of Rule 89 of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the explanation inserted in the said sub-rule.

4.4 Law Committee deliberated on the issue in its meeting held on 14.06.2023 & 15.06.2023 and approved the abovesaid proposal.

5. **Clarification on the scope and computation of the refund on account of inverted duty structure as provided in sub-section (3) of section 54 and in rule 89 (5) of the CGST Rules, 2017:**

5.1 References have been received from the Fertilizer Association of India requesting for clarification regarding scope and computation of refund on account of inverted duty structure under sub-section (3) of section 54 of CGST Act, 2017 in case of phosphatic fertilizers and urea in view of the issues raised by some of the field formations. Fertilizer Association of India has stated that the Phosphatic fertilizers and Urea attract GST rate of 5% and that the inputs for these fertilizers are Ammonia (taxable at 18%) and other inputs and packing materials which attract GST rates higher than 5% and that there is an inverted duty structure as regards these outwards supplies of fertilizers. Additionally, they have stated that such fertilizers are under Nutrient based Subsidy Scheme of the Government of India, whereby subsidy is provided by the Government to these fertilizer companies and thus, the fertilizer companies pay GST only on subsidized value of the fertilizers. It is worthwhile to mention that as per Section 15 of the CGST Act, 2017, the transaction value on the supply of goods shall not include the subsidies provided by the Central Government or the State Governments. It has been mentioned that some of the field formations are taking a view that the refund on account of inverted rated supply of goods is not admissible to these fertilizer units as the accumulation of ITC is on account of value difference between the output and the input supplies owing to the subsidy portion of value not included in the transaction value of the output supplies

and not on account of rate difference between the output and input supplies. In addition, some of the field formations are curtailing the refund amount in respect of such refunds under inverted duty structure to these fertilizer units by adopting computation methodologies like subtracting the ITC attributable to the subsidy while the calculating 'Net ITC' in the formula prescribed under sub-rule(5) of rule 89 of CGST Rules, 2017 and in some cases, adding a notional amount to the 'tax payable on inverted rated supply' on account of the tax on the subsidized portion of the value of fertilizers. Request has been made to clarify the issue to avoid unnecessary litigation.

5.2 The matter has been examined. Sub-section (3) of section 54 of the CGST Act, 2017, which provides for the refund of any unutilized input tax credit on account of zero-rated supply as well as inverted duty structure, is reproduced as under:

> *"(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*
>
> **Provided** *that no refund of unutilised input tax credit shall be allowed in cases other than-*
>
> *(i) zero rated supplies made without payment of tax;*
>
> *(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*
>
> **Provided** *further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:*
>
> **Provided** *also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.***"**

5.3 On perusal of the above, it can be stated that inter-alia, refund of unutilized input credit may be available in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

5.4 In this regard, reference is also invited to sub-rule (5) of the rule 89 of the CGST Rules, 2017, which provides that 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 x (Net ITC ÷ ITC availed on inputs and input 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*

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

5.5 Further, reference is invited to para 54 of the Master Circular No. 125/44/2019-GST dated 18.11.2019 on calculation of refund amount for claims of refund of accumulated ITC on account of inverted tax structure wherein it has been clarified that where there are multiple inputs attracting different rates of tax, the term "Net ITC" in the formula provided in rule 89(5) of the CGST Rules covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax. Para 54 of the Circular No. 125/44/2019-GST dated 18.11.2019 reads as below:

"54. There have been instances where while processing the refund of unutilized ITC on account of inverted tax structure, some of the tax authorities denied the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with the help of following example:

i. Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).

ii. The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

iii. Further assume that the applicant supplies the output Y having value of Rs. 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be Rs. 3,000/-. Since the applicant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000/-.

iv. If we assume that Input A, having value of Rs. 500/- and Input B, having value of Rs. 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to Rs. 385/- (Rs. 25/- and Rs. 360/- on Input A and Input B respectively).

v. Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385/-.

vi. From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is Rs. 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is Rs. 25/-."

5.6 In view of the above, it can be stated that that the fundamental principle for grant of refund on account of inverted tax structure appears to be the rate of tax on inputs being higher than the rate of tax on outputs. Where there are multiple inputs attracting different rates of tax, the term "Net ITC" in the formula provided in rule 89(5) of the CGST Rules covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax, as long as there are some inputs on which the rate of tax is higher than the rate of tax on outputs. Further, the taxable value of the outwards supplies has no implication on the calculation of the refund amount of accumulated input tax credit as per the formula provided under rule 89(5) of CGST Rules, 2017. Even if the taxable value of the outwards supplies is lower due to the subsidy being provided by the Government, the refund of accumulation of ITC cannot be denied solely on the ground that the accumulation of ITC is on account of value difference between the output and the input supplies.

5.7 Further, in the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the formula prescribed under sub-rule (5) of the rule 89 of the CGST Rules, 2017. Any deviation from the prescribed formula, by either adopting a calculation of "Net ITC" in variation with the definition provided under sub-rule(5) of rule 89 of CGST Rules, 2017 by removing the ITC attributable to the subsidy from the calculation of 'Net ITC' or adding a notional amount while calculating the 'tax payable on inverted rated supply' in the said formula, may not be in accordance with the provisions of sub-rule (5) of rule 89 of CGST Rules.

5.8 Law Committee deliberated on the issue in its meeting held on 24.05.2023 and recommended that the issue may be clarified through a circular in form of FAQs.

6. **Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A:**

6.1 Sub-rule (1) of rule 96A of the CGST Rules, 2017 specifies that a registered person availing of the option to export without payment of integrated tax is required to furnish a bond or a Letter of Undertaking (LUT), prior to export, binding himself to pay the tax due along with applicable interest within a period of -

> *(a)* ***fifteen days after the expiry of three months****, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export,* ***if the goods are not exported out of India****; or*
>
> *(b)* ***fifteen days after the expiry of one year****, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export,* ***if the payment of such services is not received*** *by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.*

6.2 There may be instances where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A, but the said compliances are made after expiry of the said time lines. The issue as to whether in such cases, the exporter will have to asked to pay integrated tax first and **then to claim refund of the same,** has been clarified in para 45 of Circular No. 125/44/2019 - GST dated 18.11.2019 which is re-produced herewith:

"…….*exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services"*

6.3 References have been received in this regard that there are instances where exporters have voluntarily made payment of integrated tax due along with applicable interest in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. Clarification has been sought as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of sub – rule (1) of rule 96A.

6.4 The issue has been examined. Reference is drawn to Para 44 of Circular No. 125/44/2019 - GST dated 18.11.2019 wherein, while clarifying that the facility for export under LUT may be allowed on ex *post facto* basis, the following is also stated:

"…it is emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made".

6.5 On a conjoint reading of the Para 44 and Para 45 of Circular No. 125/44/2019 - GST dated 18.11.2019, it is clear that so long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frame as prescribed in clause (a) or (b) of sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters and hence they remain entitled to claim refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, 2017.

6.6 Further, the exporter may also be entitled to the refund of the amount of integrated tax paid by him in compliance of the provisions of subrule (1) of rule 96A, subsequent to actual export of the goods or as the case may be, realization of payment in case of export of services.

6.7 In light of above discussion, it is proposed to clarify that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the tax so paid earlier, in compliance of the provisions of sub – rule (1) of rule 96A of the CGST Rules. It is further proposed that the refund application in the said scenario may be made under the category "Excess payment of tax". However, till the time the functionality for filing refund in respect of claim of IGST refund paid in compliance to provisions of sub-rule (1) of rule 96A of CGST Rules as "excess payment of tax" is not available on GSTN portal, the applicant may file such refund application under the category "Any Other".

6.8 Law Committee deliberated on the issue in its meeting held on 14.06.2023 & 15.06.2023 and approved the abovesaid proposal stating therein that the exporters cannot be denied the substantive

benefits of refund accruing to them on account of zero-rated supply and consequently they would be entitled to refund under Sub-section (3) of Section 54 of CGST Act, 2017 as well as of refund of IGST paid in compliance of the provisions of sub – rule (1) of rule 96A of the CGST Rules. Law Committee also recommended that no refund of interest paid can be given in such cases. Law Committee recommended to clarify the issue through a circular.

7. The draft circular incorporating the clarifications discussed in Para 2, 3, 4, 5 and 6 above,, as approved by Law Committee, is enclosed at **Annexure-A** to this agenda note.

8. Accordingly, the Agenda is placed before the GST Council for deliberation and approval.

ANNEXURE-A
DRAFT
Circular No. xx

CBEC-xx/xx-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the XX May, 2023

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 refund related issues – Reg.

References have been received from the field formations seeking clarification on various issues relating to GST refunds. In order to clarify these issues 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 issues detailed hereunder:

1. Refund of accumulated input tax credit under Section 54(3) on the basis of that available as per FORM GSTR 2B: -

1.1 In terms of Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, refund of accumulated input tax credit (ITC) is restricted to the input tax credit as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Para 5 of the said circular is reproduced below:

> ***"5. Guidelines for refunds of Input Tax Credit under Section 54(3):***
>
> ***5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund***

of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent."

1.2 However, in view of the insertion of clause (aa) in sub-section (2) of section 16 of the CGST Act, 2017 w.e.f. 1st January, 2022 vide Notification No. 39/2021-Central Tax dated 21.12.2021, and the amendment in Rule 36(4) of the Central Goods and Services Tax Rules, 1997 (hereinafter referred to as "CGST Rules") w.e.f. 1st January, 2022 vide Notification No. 40/2021- Central Tax dated 29.12.2021, doubts are being raised as to whether the refund of the accumulated input tax credit under section 54(3) of CGST Act shall be admissible on the basis of the input tax credit as reflected in **FORM GSTR-2A** or on the basis of that available as per **FORM GSTR-2B** of the applicant.

1.3 The matter has been examined and it has been decided that since availment of input tax credit has been linked with **FORM GSTR-2B** w.e.f. 01.01.2022, availability of refund of the accumulated input tax credit under section 54(3) of CGST Act for a tax period shall be restricted to input tax credit as per those invoices, the details of which are reflected in **FORM GSTR-2B** of the applicant for the said tax period or for any of the previous tax periods and on which the input tax credit is available to the applicant. Accordingly, para 36 of Circular No. 125/44/2019-GST dated 18.11.2019, which was earlier modified vide Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, stands modified to this extent. Consequently, Circular No. 139/09/2020-GST dated 10.06.2020, which provides for restriction on refund of accumulated input tax credit on those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant, also stands modified accordingly.

1.4 It is further clarified that as the said amendments in section 16(2) (aa) of CGST Act and Rule 36(4) of CGST Rules have been brought into effect from 01.01.2022, therefore, the said restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per FORM GSTR-2B for the said tax period or for any of the previous tax periods, shall be applicable for the refund claims for the tax period of January 2022 onwards. However, in cases where refund claims for a tax period from January 2022 onwards has already been disposed of by the proper officer before the issuance of this circular, in accordance with the extant guidelines in force, the same shall not be reopened because of the clarification being issued by this circular.

2. Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. 125/44/2019-GST dated 18.11.2019.

2.1 Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 provides for an undertaking to be provided by the applicant electronically along with the refund claim in **FORM RFD-01** in accordance with the Rule 89(1) of CGST Rules. Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 is reproduced below:

"7. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."

2.2 In accordance with the same, the following undertaking was inserted in **FORM GST RFD-01**:

"I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 read with sub-section (2) of section 42 of the CGST/SGST Act have not been complied with in respect of the amount refunded."

2.3 However, Section 42 of CGST Act has been omitted w.e.f. 1st October, 2022 vide Notification No. 18/2022-CT dated 28.09.2022. Further, an amendment has also been made in Section 41 of the CGST Act, wherein the concept of provisionally accepted input tax credit has been done away with. Besides, **FORM GSTR-2** and **FORM GSTR-3** have also been omitted from CGST Rules. In view of this, reference to section 42, **FORM GSTR-2** and **FORM GSTR-3** is being deleted from the said para in the Circular as well as from the said undertaking. Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 & the undertaking in **FORM GST RFD-01** may, therefore, be read as follows:

Para 7: "The applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."

Undertaking in FORM GST RFD 01:- "I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST/ SGST Act have not been complied with in respect of the amount refunded."

3. Consequentially, **Annexure-A** to the Circular No. 125/44/2019-GST dated 18.11.2019 also stands amended to the following extent:

i. "Undertaking in relation to sections 16(2)(c) and section 42(2)" wherever mentioned in the column "Declaration/Statement/Undertaking/Certificates to be filled online" may be read as "Undertaking in relation to sections 16(2)(c)".

ii. "Copy of GSTR-2A of the relevant period" wherever required as supporting documents to be additionally uploaded stands removed/deleted.

iii. "Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period" wherever required as supporting documents to be additionally uploaded stands removed/deleted.

4. **Manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of Rule 89 *vide* Notification No. 14/2022-CT, dated 05.07.2022.**

4.1 Doubts have been raised as regarding calculation of "adjusted total turnover" under sub-rule (4) of rule 89 of CGST Rules, in view of insertion of Explanation in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-Central Tax dated 05.07.0222. Clarification is being sought as to whether value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of CGST Rules for the purpose of calculation of "adjusted total turnover" in the formula under the said sub-rule..

4.2 In this regard, it is mentioned that consequent to amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, Circular 147/03/2021-GST dated 12.03.2021 was issued which *inter alia* clarified that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89.

4.3 On similar lines, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule.

5. **Clarification on admissibility and computation of refund of accumulated input tax credit on account of inverted duty structure:-**

5.1 There are cases in respect of certain industries/ sectors, such as fertilizers etc., where though there is an inverted duty structure on account of the rate of tax on some inputs being higher than the rate of tax on output supplies, but owing to the subsidy being provided by the Government, the taxable value of such output supplies is lower on account of non-inclusion of the subsidy amount provided by the Government in taxable value as per provisions of section 15 of the CGST Act. Representations have been received from the trade requesting for clarification regarding admissibility and computation of refund of accumulated input tax credit (ITC) on account of inverted duty structure under sub-section (3) of section 54 of the CGST Act, read with sub-rule (5) of rule 89 of the CGST Rules, in such cases as some of the field formations are denying such refund taking a view that the accumulation of ITC is on account of value difference between the output and the input supplies owing to the subsidy portion of value not being included in the taxable value of the output supplies and not on account of rate difference between the output and input supplies. In addition, some of the field formations are curtailing the refund amount in respect of such refunds under inverted duty structure by adopting computation methodologies like subtracting the ITC attributable to the subsidy while the calculating 'Net ITC' in the formula prescribed under sub-rule (5) of rule 89 of CGST Rules and in some cases, adding a notional amount to the 'tax

payable on inverted rated supply' on account of the tax on the subsidized portion of the value of fertilizers. Request has been made to clarify the issue to avoid unnecessary litigation.

5.2 The issue has been examined and the same is hereby clarified as under:

S. No.	Issue	Clarification
1.	Whether the refund of accumulated ITC on account of inverted tax structure under sub-section (3) of section 54 of the CGST Act read with sub-rule (5) of rule 89 of the CGST Rules can be denied on the ground that the accumulation of ITC is on account of value difference between the output and the input supplies in cases where the taxable value of the outward supplies is lower due to the subsidy provided by the Government. Also, whether the calculation of the refund of unutilised input tax credit on account of inverted duty structure can be done in such cases by subtracting the ITC attributable to the subsidy provided by the Government from the calculation of 'Net ITC' in the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, or by adding a notional amount to the 'tax payable on inverted rated supply' on account of the tax on the subsidized portion of the value in the said formula.	As per sub-section (3) of section 54 of the CGST Act read with sub-rule (5) of rule 89 of the CGST Rules, the refund of accumulated input tax credit is available in cases where rate of tax on inputs is higher than the rate of tax on output supplies. The taxable value of the outward supplies has no implication on the calculation of the refund amount of accumulated input tax credit as per the formula provided under sub-rule (5) of rule 89 of CGST Rules. The refund of accumulated ITC cannot be denied solely on the ground that accumulation of input tax credit is due to the taxable value of the outward supplies being lower on account of the subsidy being provided by the Government. The refund of accumulated input tax credit on account of inverted duty structure is required to be calculated as per the formula prescribed under sub-rule (5) of the rule 89 of the CGST Rules. No such deviation can be made from the prescribed formula, either by subtracting the ITC attributable to the subsidy provided by the Government while calculating 'Net ITC' in variation with the definition provided under sub-rule (5) of rule 89 of CGST Rules or by adding a notional amount while calculating the 'tax payable on inverted rated supply' in the said formula.

6. **Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A:**

6.1 References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A of CGST Rules. Clarification is being sought as to whether subsequent

to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of sub-rule (1) of rule 96A.of CGST Rules.

6.2 It is mentioned that in terms of sub-rule (1) of rule 96A of the CGST Rules, a registered person availing of the option to export without payment of integrated tax is required to furnish a bond or a Letter of Undertaking (LUT), prior to export, binding himself to pay the tax due along with applicable interest within a period of -

(a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India

6.3 In this context, it has been clarified *inter alia* in para 45 of Circular No. 125/44/2019 - GST dated 18.11.2019 that:

"…….exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services"

6.4 Further, in Para 44 of the aforesaid Circular, it has been emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made.

6.5 The above clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible.

6.6 It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

6.7 It may further be noted that the refund application in the said scenario may be made under the category “Excess payment of tax”. However, till the time the refund application cannot be filed under the category “Excess payment of tax” due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of CGST Rules as ”Excess payment of tax”, the applicant may file the refund application under the category “Any Other” on the portal.

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

8. 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): Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.202.

A. Background:

Section 16 of the Central GST Act, 2017 provides for eligibility and conditions for taking the Input Tax Credit (ITC) for the taxpayer and is reproduced below:

Section 16. Eligibility and conditions for taking input tax credit.-

(1) ...

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) ***he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed****;*

[1][(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) ***he has received the goods or services or both****.*

……

(c) subject to the provisions of[4]section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that ...

1.1 A perusal of the above section leads to the conclusion that input tax credit can be availed by a registered person only if the conditions specified in section 16 of CGST Act are fulfilled. One of the conditions for availment of ITC is that the tax charged in respect of the said supply should have been paid to the Government by the concerned supplier.

1.2 During the initial period of implementation of GST, many suppliers failed to furnish the correct details of outward supplies in their FORM GSTR-1. Because of such discrepancies in FORM GSTR-1 of the suppliers, FORM GSTR-2A of their recipients was incomplete. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B, as restrictions in availment of ITC upto certain specified limit beyond the ITC

available to the registered persons as per FORM GSTR-2A were provided under rule 36(4) only with effect from 9th October 2019. Such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A are flagged by the tax officers during proceedings such as scrutiny/ audit/ investigation etc.

1.3. In view of this, various representations were received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A.

1.4 The matter was deliberated by the GST Council in its 48th meeting. The Council recommended that a circular may be issued to clarify the manner of dealing with discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19. Accordingly, Circular No. 183/15/2022-GST was issued on 27th December 2022.

B. Analysis:

2.1 Even though the availability of ITC was subjected to restrictions and conditions specified in Section 16 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") from 1st July, 2017 itself, restrictions regarding availment of ITC by the registered persons up to certain specified limit beyond the ITC available as per **FORM GSTR-2A** were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019.

2.2 The said rule allowed availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the invoice furnishing facility (IFF), to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 of CGST Act in **FORM GSTR-1** or using the IFF. This limit was brought down to 10% w.e.f 01.01.2020 and further reduced to 5% w.e.f. 01.01.2021. The said rule was intended to allow availment of due credit in cases where the suppliers may have delayed in furnishing the details of outward supplies. Further, w.e.f. 01.01.2022, consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act, ITC can be availed only up to the extent communicated in **FORM GSTR-2B**. Rule 36(4) of CGST Rules, 2017 presently reads as follows:

Rule 36. Documentary requirements and conditions for claiming input tax credit.-

(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 subsection (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 input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.

3.1 As discussed above, rule 36(4) of CGST Rules allowed additional credit to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 to 31.12.2019, 01.01.2020 to 31.12.2020 and 01.01.2021 to 31.12.2021 respectively, subject to certain terms and conditions, in respect of invoices/supplies that were not reported by the concerned suppliers in their **FORM GSTR-1** or IFF, leading to discrepancies between the amount of ITC availed by the registered persons in their returns in **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A**.

3.2 It may, however, be noted that such availment of input tax credit was subject to the provisions of clause (c) of sub-section (2) of section 16 of the CGST Act which provides that ITC cannot be availed unless tax on the said supply has been paid by the supplier. In this context, it is mentioned that rule 36(4) of CGST Rules was a facilitative measure and availment of ITC in accordance with rule 36(4) was subject to fulfilment of conditions of section 16 of CGST Act including those of clause (c) of sub-section (2) thereof regarding payment of tax by the supplier on the said supply.

3.3 Though the matter of dealing with difference in Input Tax Credit (ITC) availed in **FORM GSTR-3B** as compared to that detailed in **FORM GSTR-2A** has been clarified for FY 2017-18 and 2018-19 vide Circular No. 183/15/2022-GST dated 27th December, 2022, various representations have been received seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A** during the period from 01.04.2019 to 31.12.2021.

C. Proposal:

4. Therefore, in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Law Committee in its meeting held on 14.06.2023 and 15.06.2023 recommended to issue a circular providing clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A** during the period from 01.04.2019 to 31.12.2021.

5. Accordingly, a Draft Circular on the same is attached at **Annexure-A** for approval of the Council.

Annexure – A

Circular No. …../…/2023-GST

F. No. CBIC-20016/13/2023-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the XX June, 2023

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 to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021– Reg.

Attention is invited to Circular No. 183/15/2022-GST dated 27th December, 2022, vide which clarification was issued for dealing with the difference in Input Tax Credit (ITC) availed in **FORM GSTR-3B** as compared to that detailed in **FORM GSTR-2A** for FY 2017-18 and 2018-19, subject to certain terms and conditions.

2. Even though the availability of ITC was subjected to restrictions and conditions specified in Section 16 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") from 1st July, 2017 itself, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per **FORM GSTR-2A** were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. W.e.f. 09.10.2019, the said rule allowed availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the invoice furnishing facility (IFF), to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 of CGST Act in **FORM GSTR-1** or using the IFF. The said limit was brought down to 10% w.e.f 01.01.2020 and further reduced to 5% w.e.f. 01.01.2021. The said rule was intended to allow availment of due credit in cases where the suppliers may have delayed in furnishing the details of outward supplies. Further, w.e.f. 01.01.2022, consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act, ITC can be availed only upto the extent communicated in **FORM GSTR-2B**.

3.1 As discussed above, rule 36(4) of CGST Rules allowed additional credit to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 to 31.12.2019, 01.01.2020 to 31.12.2020 and 01.01.2021 to 31.12.2021 respectively, subject to certain terms and conditions, in respect of invoices/supplies that were not reported by the concerned suppliers in their **FORM GSTR-1** or IFF, leading to discrepancies between the amount of ITC availed by the registered persons in their returns in **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A**. It may, however, be noted that such availment of input tax credit was subject to the provisions of clause (c) of sub-section (2) of section 16 of the CGST Act which provides that ITC cannot be availed unless tax on the said supply has been paid by the supplier. In this context, it is mentioned that rule 36(4) of CGST Rules was a facilitative measure and availment of ITC in accordance with rule 36(4) was subject to fulfilment of conditions of section 16 of CGST Act including those of clause (c) of sub-section (2) thereof regarding payment of tax by the supplier on the said supply.

3.2. Though the matter of dealing with difference in Input Tax Credit (ITC) availed in **FORM GSTR-3B** as compared to that detailed in **FORM GSTR-2A** has been clarified for FY 2017-18 and 2018-19 vide Circular No. 183/15/2022-GST dated 27th December, 2022, various representations have been received seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A** during the period from 01.04.2019 to 31.12.2021.

4. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

(i) Since rule 36(4) came into effect from 09.10.2019 only, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, *in toto*, for the period from **01.04.2019 to 08.10.2019**.

(ii) In respect of period from **09.10.2019 to 31.12.2019**, rule 36(4) of CGST Rules permitted availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using IFF to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes, the details of which have been furnished by the suppliers under sub-section (1) of section 37 in **FORM GSTR-1** or using IFF. Accordingly, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using IFF shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. This is clarified through an illustration below:

Illustration:

Consider a case where the total amount of ITC available as per **FORM GSTR-2A** of the registered person was Rs. 3,00,000, whereas, the amount of ITC availed in **FORM GSTR-3B** by the said registered person during the corresponding tax period was Rs. 5,00,000. However, as per rule 36(4) of CGST Rules as applicable during the said period, the said registered person was not allowed to avail ITC in excess of an amount of Rs 3,00,000*1.2 = Rs.3,60,000.

In the above case, the ITC of Rs 1,40,000 which has been availed in excess of Rs. 3,60,000 shall not be admissible as per rule 36(4) of CGST Rules as applicable during the said period even if the requisite certificate as prescribed in Circular No. 183/15/2022-GST dated 27.12.2022 is submitted by the registered person. Therefore, ITC availed in **FORM GSTR-3B** in excess of that available in **FORM GSTR-2A** upto an amount of Rs 60,000 only (i.e. 3,60,000-3,00,000) can be allowed subject to production of the requisite certificates as per Circular No. 183/15/2022-GST dated 27.12.2022.

(iii) Similarly, for the period from **01.01.2020 to 31.12.2020**, when rule 36(4) of CGST Rules allowed additional credit to the tune of 10% in excess of the that reported by the suppliers in their **FORM GSTR-1** or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the IFF shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in **FORM GSTR-1** or using the IFF.

(iv) Further, for the period from **01.01.2021 to 31.12.2021**, when rule 36(4) of CGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their **FORM GSTR-1** or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the IFF shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in **FORM GSTR-1** or using the IFF.

5. It is further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their **FORM GSTR-1** or using IFF and is communicated to the said registered person in **FORM GSTR-2B**.

6. Further, it may be noted that proviso to rule 36(4) of CGST Rules was inserted vide Notification No. 30/2020-CT dated 03.04.2020 to provide that the condition of rule 36(4) shall be applicable

cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similarly, second proviso to rule 36(4) of CGST Rules was substituted vide Notification No. 27/2021-CT dated 01.06.2021 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period April to June, 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021. The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.

7. It may also be noted that these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

8. These instructions will apply only to the ongoing proceedings in scrutiny/ audit/ investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

9. Difficulty, if any, in the 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(viii) : Mechanism to deal with differences in ITC between GSTR-2B and GSTR-3B, along with draft rules and proposed FORM DRC-01C for implementing the same.

On the basis of the recommendations of the Council, Rule 88C has been inserted in CGST Rules, 2017 vide Notification No. 26/2022 - CT dated 26.12.2022 to provide for a mechanism of identification of taxpayers having difference in the liability declared in FORM GSTR-1 and that reported in FORM GSTR-3B above a threshold limit and system based intimation to such taxpayers, along with provision for auto-compliance on part of the taxpayers to explain the difference or take remedial action in respect of such difference.

2. The Law Committee in its meetings held on 15.03.2023, 10.04.2023 and 11.04.2023 deliberated upon ways to safeguard revenue by finding suitable manner of handling and controlling the difference in ITC reported between **FORM GSTR-2B** and **FORM GSTR-3B** by the taxpayers, in a manner similar to that provided for the difference between the liability reported in FORM GSTR-1 and FORM GSTR-3B vide Rule 88C of CGST Rules, 2017. Law Committee felt that considering large number of taxpayers involved, such a mechanism should be based on system based identification of the taxpayers based on certain approved risk criteria and a procedure of auto-compliance on the part of the taxpayers to explain/ take remedial action in respect of such difference.

3. The Law Committee opined that where the input tax credit availed in the return furnished in FORM GSTR-3B by a registered person exceeds the amount of input tax credit available in accordance with the auto-generated statement containing the details of input tax credit in FORM GSTR-2B for a tax period by a more than a certain threshold, the said registered person may be intimated on the portal about such difference and be directed to either pay an amount equal to the said excess input tax credit along with interest or explain the difference. Unless the said registered person either deposits the amount specified in the said intimation or furnishes a reply explaining the reasons for any amount remaining unpaid, such a person may not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using invoice furnishing facility for a subsequent tax period. Further, where any amount of the excess input tax credit remains to be paid and where no explanation or reason for the same is furnished for the same or where the explanation or reason furnished is not found to be acceptable by the proper officer, the said amount may be demanded in accordance with the provisions of section 73 or section 74 of the CGST Act, 2017, as the case may be.

4. To implement the said approach, the Law Committee recommended as follows, subject to final recommendations of GoM on System Reforms which is also examining this issue and subject to final recommendations of GST Council:

(i) Insertion of new **rule 88D** in CGST Rules to communicate the difference between the input tax credit availed as per FORM GSTR-3B and that available as per FORM GSTR-2B and to direct payment of the differential amount or explain the difference as below:

> ***88D. Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in in return.-***

*(1) Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in **FORM GSTR-3B** exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in **FORM GSTR-2B** in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in **Part A** of **FORM GST DRC-01C**, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—*

*(a) pay an amount equal to the excess input tax credit availed in the said **FORM GSTR-3B**, along with interest payable under section 50, through **FORM GST DRC-03**, or*

(b) explain the reasons for the aforesaid difference in input tax credit on the common portal,

within a period of seven days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either,

*(a) pay an amount equal to the excess input tax credit, as specified in **Part A** of **FORM GST DRC-01C**, fully or partially, along with interest payable under section 50, through **FORM GST DRC-03** and furnish the details thereof in **Part B** of **FORM GST DRC-01C**, electronically on the common portal, or*

*(b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess input tax credit that has still remained to be paid, if any, in **Part B** of **FORM GST DRC-01C**,*

within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains to be paid within the period specified in the said sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.

(ii) Insertion of a new **clause (e) in sub-rule (6) of rule 59 of CGST Rules** to enable blocking of **FORM GSTR-1/ IFF** for a subsequent tax period unless the taxpayer has reversed the amount specified in the intimation or has furnished a reply explaining the reasons for any amount remaining to be reversed, as below:

*(e) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88D in respect of a tax period or periods, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37, in **FORM***

GSTR-1 *or using the invoice furnishing facility, for a subsequent tax period, unless he has either paid the amount equal to the excess input tax credit as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess input tax credit that has still remained to be paid, as required under the provisions of sub-rule (2) of rule 88D.*

(iii) **FORM GST DRC-01C** may be inserted in CGST Rules as required under sub-rule (1) of the proposed rule 88D (enclosed as **Annexure** to this agenda note).

(iv) To begin with, difference between the input tax credit availed in FORM GSTR-3B & that available as per FORM GSTR-2B of more than 20% as well as more than Rs. 25 lakhs may be considered for the purpose of intimation to the concerned registered person under proposed rule 88D.

5. Accordingly, the recommendations of the Law Committee in para 4 are placed before the Council for approval.

*****

Annexure

FORM GST DRC-01C

[*See rule 88D*]

PART-A (System Generated)

Intimation of difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return

Ref No: **Date**:

GSTIN:

Legal Name:

1. It is noticed that the input tax credit availed by you in the return furnished in **FORM GSTR-3B** exceeds the amount of input tax credit available to you in accordance with the auto-generated statement containing the details of input tax credit made available to you in **FORM GSTR-2B** for the period <from> <to> by an amount of Rs. …… The details thereof are as follows:

Form Type	Input tax credit available / availed (in Rs.)				
	IGST	CGST	SGST/UTGST	Cess	Total
FORM GSTR-2B					
FORM GSTR-3B					
Excess input tax credit availed					

2. In accordance with sub-rule (1) of rule 88D, you are hereby requested to either pay an amount equal to the said excess input tax credit, along with interest payable under section 50, through **FORM GST DRC-03** and furnish the details thereof in **Part-B** of **FORM GST DRC-01C**, and/or furnish the reply in **Part-B** of **FORM GST DRC-01C** incorporating reasons in respect of that part of the excess input tax credit that has remained to be paid, within a period of seven days.

3. It may be noted that where any amount of the excess input tax credit remains to be paid after completion of a period of seven days and where no explanation or reason for the same is furnished by you or where the explanation or reason furnished by you is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74 of the CGST Act, 2017, as the case may be.

4. This is a system generated notice and does not require signature.

PART-B

Reply by Taxpayer in respect of the intimation of difference in input tax credit

Reference No. of Intimation: Date:

A. I have paid the amount equal to the excess input tax credit, as specified in **Part A** of **FORM GST DRC-01C**, fully or partially, along with interest payable under section 50, through **FORM GST DRC-03**, and the details thereof are as below:

ARN of FORM GST DRC-03	Paid Under Head	Tax Period	IGST	CGST	SGST/UTGST	CESS	Interest

AND/OR

B. The reasons in respect of that part of the excess input tax credit that has remained to be paid are as under:

S. No	Brief Reasons for Difference	Details (Mandatory)

1	Input tax credit not availed in earlier tax period(s) due to non-receipt of inward supplies of goods or services in the said tax period (including in case of receipt of goods in installments).	
2	Input tax credit not availed in earlier tax period(s) inadvertently or due to mistake or omission	
3	ITC availed in respect of import of goods, which is not reflected in **FORM GSTR-2B**	
4	ITC availed in respect of inward supplies from SEZ, which are not reflected in **FORM GSTR-2B**	
5	Excess reversal of ITC in previous tax periods which is being reclaimed in the current tax period	
6	Recredit of ITC on payment made to supplier, in respect of ITC reversed as per rule 37 in earlier tax period.	
7	Recredit of ITC on filing of return by the supplier, in respect of ITC reversed as per rule 37A in earlier tax period.	
8	**FORM GSTR-3B** filed with incorrect details and will be amended in next tax period (including typographical errors, wrong tax rates, etc.)	
9	Any other reasons (Please specify)	

Verification

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.

Signature of Authorised Signatory

Name:

Designation/Status:

Place:

Date:

Agenda Item 3(ix): Procedure for Recovery of Tax and Interest in terms of Rule 88C(3)

On the recommendations of the GST Council in its 48th meeting held on 17.12.2022, rule 88C was inserted in the CGST Rules with effect from 26.12.2022 for dealing with cases where the output tax liability in terms of **FORM GSTR-1** of a registered person for any particular month exceeds the output tax liability disclosed by the said person in the return in **FORM GSTR-3B** for the said month by specified amount and specified percentage. Sub-rule (3) of the said rule reads as follows:-

> *(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.*

2. The Council had also recommended Law Committee to formulate a separate procedure for examination of such cases by the proper officer, where the taxpayer deposits the differential tax liability only partly, with or without an explanation for such short payment, and for further action for recovery of the unpaid amount in accordance with the provisions of section 79, to the extent no satisfactory explanation has been provided by the taxpayer for such differential unpaid amount.

3. The Law Committee in its meeting held on 03.05.2023 examined the issue as under:

3.1 Section 79 of the CGST Act provides for recovery of any amount payable by a person to the Government under any of the provisions of the Act or the rules made thereunder but which remains unpaid.

3.2 Sub-rule (3) of Rule 88C mentioned above derives its authority from sub-section (12) of Section 75 which reads as under:-

> *"(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.*
>
> ***Explanation**: For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under Section 37, but not included in the return furnished under Section 39."*

3.3 Accordingly, the amount of tax liability which has been reported in FORM GSTR-1, but the tax on which has not been paid in the return in FORM GSTR-3B, and which remains unpaid even after the 'proceeding' in terms of sub-rules (1) and (2) of Rule 88C, appears to be recoverable under Section 79. Besides, there may be cases where interest is recoverable under section 79.

3.4 The manner of recovery of tax has been laid down in Rule 142. Since the amount referred to in Para 3.3 above is an amount in respect of which even though no adjudication has been conducted, it is, nevertheless, recoverable under the law. Law Committee was of the view that a separate procedure may

be prescribed for recovery of such amount of tax or interest recoverable in accordance with section 75 read with rule 88C, or otherwise.

4. Accordingly, the Law Committee has recommended the following:

(a) a new Rule 142B may be inserted in the CGST Rules as follows:-

142B. Intimation of certain amounts liable to be recovered under Section 79 of the Act.- *(1) Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in* ***FORM GST DRC-01D****, directing the person in default to pay the said amount, along with applicable interest, or, as the case may the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in* ***FORM GST PMT-01****.*

(2) The intimation referred to in sub-rule (1) shall be treated as the notice for recovery.

(3) Where any amount of tax specified in the intimation referred to in sub-rule (1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of Rule 143 or Rule 144 or Rule 145 or Rule 146 or Rule 147 or Rule 155 or Rule 156 or Rule 157 or Rule 160.

(b) a new **FORM GST DRC-01D** may be inserted as follows:

FORM GST DRC –01D

[See rule 142B]

Intimation for amount recoverable under section 79

Reference No. - Date-

1. Details of intimation:

(a) Financial year:

(b) Tax period: From --- To --------

2. Section(s) of the Act or rule (s) under which intimation is issued: < Drop down or check box for section 75 (12) r/w 79 may be provided>

3. Details of tax, interest or any amount payable: (Amount in Rs.)

Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
From	To								
1	2	3	4	5	6	7	8	9	10
Total									

You are hereby directed to make the payment within seven days failing which proceedings shall be initiated against you to recover the outstanding dues as per the provisions of section 79 of the Act.

Signature:

Name:
Designation:
Jurisdiction:
Address:

To,

GSTIN/ID
Name
Address

Note -

1. Only applicable fields may be filled up.

5. Accordingly, the recommendations of the Law Committee in para 4 are placed before the Council for approval.

*****

Agenda Item 3(x): Annual Returns for FY 2022-23

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. V*ide* 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 and *vide* Notification No.14/2022-Central tax dated 05.07.2022 for FY 2021-22.

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 2021-22** was exempted for taxpayers having aggregate annual turnover upto two crore rupees, vide notification No. 10/2022-CT, dated 05.07.2022;

(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 2021-22** were simplified *vide* Notification No. 14/2022-Central tax dated 05.07.2022, making few tables as optional.

3. In light of the same, the Law Committee in its meeting held on 15.03.2023 discussed and examined requisite changes in Annual Return forms for FY 2022-23 and recommended as under:

(i) Government had introduced new tax rate of 6% for brick kiln taxpayers in FY 2022-23. Separate rows for the said new tax rate may be inserted in table 9, 11 and Pt. V of **FORM GSTR-9C**.

(ii) The relaxations provided in FY 2021-22 in respect of various tables of **FORM GSTR-9** and **FORM GSTR-9C** may be continued for FY 2022-23. The details of relaxations provided in FY 2021-22 are enclosed as **Annexure A** to this note.

(iii) The filing of annual return (in **FORM GSTR-9/9A**) for the FY 2022-23 may be exempted for taxpayers having aggregate annual turnover upto two crore rupees, as per the relaxation extended in previous FYs. Draft notification in this regard is enclosed as **Annexure B** to this note.

4. The recommendations of the Law Committee at para 3 are placed before the GST Council for deliberation and approval.

*****

Annexure A

The details of relaxations provided in FY 2021-22, which are proposed to be continued in FY 2022-23

Table 1: Simplification of FORM GSTR-9		
Table No.	**Details of relaxations in previous FYs**	**Status of relaxations in FY 2021-22**
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 was 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 was not 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.	The registered person was required to report Non-GST supply (5F) separately and was given an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the "exempted" row only.
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 was 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	The relaxation on the pattern of 2020-21 was continued for 2021-22.

	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.	
	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.	The relaxation was not continued for 2021-22 as it is desirable that now the details of Table 6C and 6D may be sought separately.
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 was 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 was 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 was 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 was 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 were aligned with these HSN requirements. The relaxation was not 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 was continued for FY 2021-22.

Table 2: Simplification of FORM GSTR-9C		
Table No.	**Details of relaxations in previous FYs**	**Status of relaxations in FY 2022-23**
Table No.	**Details**	**Recommendations**
5B to 5N	**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. ➢ 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).	The relaxation was 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 was 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	**2017-18, 2018-19, 2019-20 & 2020-21**: The registered person was given an option to not fill this table.	The relaxation on the pattern of 2020-21

	➢ 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.	was continued for 2021-22.

Annexure B

Draft notification to exempt taxpayers having AATO upto Rs. 2 crores from the requirement of furnishing annual return for FY 2022-23

[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. --/2023 – Central Tax

New Delhi, the -- June, 2023

G.S.R. .....(E).— In exercise of the powers conferred by the first proviso to section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby exempts the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year.

[F. No. CBIC-20001/2/2022-GST]

(Alok Kumar)

Director

Annexure C

Draft notification to simplify annual return for FY 2022-23

[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. --/2023 – Central Tax

New Delhi, the -- June, 2023

G.S.R... (E). –In exercise of the powers conferred by section 164 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 rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. **Short title and commencement**.- (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2023.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in **FORM GSTR-9**, under the heading Instructions, -

(a) in paragraph 4, -

(A) after the word, letters and figures "or FY 2021-22", the word, letters and figures "or FY 2022-23" shall be inserted;

(B) in the Table, in second column, -

(I) against serial numbers 5D, 5E and 5F, the following entries shall be inserted at the end, namely: –

'For FY 2022-23, the registered person shall report Non-GST supply (5F) separately and shall have an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the "exempted" row only.';

(II) against serial numbers 5H, 5I, 5J and 5K, for the figures and word "2020-21 and 2021-22", the figures and word "2020-21, 2021-22 and 2022-23" shall respectively be substituted;

(b) in paragraph 5, in the Table, in second column, -

(A) against serial numbers 6B, 6C, 6D and 6E, for the letters and figures "FY 2019-20, 2020-21 and 2021-22", the letters, figures and word "FY 2019-20, 2020-21, 2021-22 and 2022-23" shall respectively be substituted;

(B) against serial numbers 7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H, for the figures and word "2020-21 and 2021-22", the figures and word "2020-21, 2021-22 and 2022-23" shall be substituted;

(c) in paragraph 7, -

(A) after the words and figures "filed upto 30th November, 2022.", the following shall be inserted, namely: -

"For FY 2022-23, Part V consists of particulars of transactions for the previous financial year but paid in the **FORM GSTR-3B** of April, 2023 to October, 2023 filed upto 30th November, 2023.";

(B) in the Table, in second column, -

(I) against serial numbers 10 & 11, the following entries shall be inserted at the end, namely: -

"For FY 2022-23, details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 9A, Table 9B and Table 9C of **FORM GSTR-1** of April, 2023 to October, 2023 filed upto 30th November, 2023 shall be declared here.";

(II) against serial number 12, -

(1) after the words, letters, figures and brackets "upto 30th November, 2022 shall be declared here. Table 4(B) of **FORM GSTR-3B** may be used for filling up these details.", the following entries shall be inserted, namely: -

"For FY 2022-23, aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April, 2023 to October, 2023 filed upto 30th November, 2023 shall be declared here. Table 4(B) of **FORM GSTR-3B** may be used for filling up these details.";

(2) for the figures and word "2020-21 and 2021-22", the figures and word "2020-21, 2021-22 and 2022-23" shall be substituted;

(III) against serial number 13, -

(1) after the words, letters and figures "reclaimed in FY 2022-23, the details of such ITC reclaimed shall be furnished in the annual return for FY 2022-23,", the following entries shall be inserted, namely: -

"For FY 2022-23, details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April, 2023 to October, 2023 filed upto 30th November, 2023 shall be declared here. Table 4(A) of FORM GSTR-3B may be used for filling up these details. However, any ITC which was reversed in the FY 2022-23 as per second proviso to sub-section (2) of section 16 but was reclaimed in FY 2023-24, the details of such ITC reclaimed shall be furnished in the annual return for FY 2023-24.";

(2) for the figures and word "2020-21 and 2021-22", the figures and word "2020-21, 2021-22 and 2022-23" shall be substituted;

(d) in paragraph 8, in the Table, in second column, -

(A) against serial numbers, -

(I) 15A, 15B, 15C and 15D,

(II) 15E, 15F and 15G,

for the figures and word "2020-21 and 2021-22" wherever they occur, the letters, figures and word "2020-21, 2021-22 and 2022-23" shall respectively, be substituted.";

(B) against serial numbers 16A, 16B and 16C for the figures and word "2020-21 and 2021-22" wherever they occur, the figures and word "2020-21, 2021-22 and 2022-23" shall respectively be substituted.";

(C) against serial numbers 17 and 18, the following paragraph shall be inserted at the end, namely: -

"For FY 2022-23, the registered person shall have an option to not fill Table 18.";

13. In the said rules, in **FORM GSTR-9C**,-

(i) in Part A, in the table -

(a) in Sl no 9, after the entry relating to serial number B, the following serial number and entry relating thereto shall be inserted, namely: -

"B-1	6%					.";

(b) in Sl no 11, after entry relating to "5%", the following entry shall be inserted, namely: -

"6%					.”;

(c) in Pt. V, after entry relating to "5%", the following entry shall be inserted, namely: -

"6%					.”;

(ii) under the heading Instructions, -

(a) in paragraph 4, in the Table, in second column, for the figures and word "2020-21 and 2021-22", wherever they occur, the figures and word "2020-21, 2021-22 and 2022-23" shall be substituted;

(b) in paragraph 6, in the Table, in second column, against serial number 14, for the figures and word "2020-21 and 2021-22", the figures and word "2020-21, 2021-22 and 2022-23" shall be substituted;

[F. No. CBIC-20001/2/2022-GST]

(Alok Kumar)
Director

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 3/2017-Central Tax, dated the 19thJune, 2017, published, vide number G.S.R. 610(E), dated the 19th June, 2017 and last amended, vide notification No. 40/2021-Central Tax, dated the 29th December, 2021, vide number G.S.R. 902(E), dated the 29th December, 2021.

Agenda Item 3(xi): Amendment in CGST Rules, 2017 regarding registration

It has been noticed that several unscrupulous elements are misusing the identity of other persons to obtain fake/ bogus registration under GST, with an intention to defraud the Government exchequer. Such fake/ non-genuine registrations are being used to fraudulently pass on input tax credit to unscrupulous recipients by issuing invoices without any underlying supply of goods or services or both. This menace of fake registrations and issuance of bogus invoices for passing of fake ITC has become a serious problem, wherein fraudulent people engage in dubious and complex transactions, causing revenue loss to the government.

2. In order to curb the menace of fake registration, a nation-wide effort in the form of a Special Drive has been launched by all Central and State Tax administrations during the period 16th May 2023 to 15th July 2023 to detect suspicious / fake GSTINs and to conduct requisite verification and further remedial action to weed out these fake billers from the GST eco-system and to safeguard Government revenue. Further, guidelines for Special All-India Drive against fake registrations have been issued vide Instruction No. 01/2023-GST dated 04.05.2023 and Standard Operating Procedure to be followed for processing of application of registration is being issued to tighten the registration process.

3. In light of several cases of unscrupulous elements being obtaining fake/ bogus GST registration, it is desirable to strengthen the process of registration under GST by amending provisions of CGST Rules, where ever required. Accordingly, the Law Committee in its meetings held on 03.05.2023, 24.05.2023 and 28.06.2023 recommended to amend certain provisions and to extend certain timelines relating to registration process as specified in CGST rules. The proposed amendment in CGST rules are as under:

3.1 Amendment in rule 10A:

3.1.1 As per provisions of rule 10A of CGST Rules, the registered person is required to furnish details of bank account, which is in name of the registered person and has been obtained on PAN of the registered person, within a period of 45 days from the date of grant of registration or the date on which return under section 39 of CGST is due to be furnished, whichever is earlier.

3.1.2 It is proposed that we may amend the said rule to provide that the details of such bank account may be required to be furnished before filing of statement of outwards supply under section 37 of CGST Act in FORM GSTR-1/ IFF.

3.1.3 Accordingly, the Law Committee recommended the following amendment in rule 10A (shown in red):

Rule 10A. Furnishing of Bank Account Details. -

After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall ~~as soon as may be,~~ within a period of ~~but not later than~~ thirty ~~forty five~~ days from the date of grant of

registration, or before furnishing the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using invoice furnishing facility ~~or the date on which the return required under section 39 is due to be furnished~~, whichever is earlier, furnish information with respect to details of bank account, *which is in name of the registered person and obtained on Permanent Account Number of the registered person** ~~or any other information, as may be required~~ on the common portal ~~in order to comply with any other provision~~:

*Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor**.

(*Text in italics is not notified yet.)

3.2 Amendment to sub-rule (2A) of rule 21A:

3.2.1 Provisions of Rule 21A of the CGST Rules provides the grounds for suspension of registration. Sub-rule (2A) thereof enumerates certain additional grounds for suspension of registration. In view of several cases of suspicious/ fake registrations based on forged documents, it is proposed that system based suspension of the registration may be made in respect of such registered persons who either do not furnish details of valid bank account under rule 10A of CGST Rules within the time period prescribed in the said rule or where the details of the bank account furnished by the said registered person are not validated by the bank within the time period prescribed under rule 10(A).

3.2.2 Accordingly, the Law Committee recommended that sub-rule (2A) of rule 21A of CGST Rules may be amended as follows (shown in red):

(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,**

orsuch 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~~,~~; or where there is a contravention of the provisions of rule 10A, 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 or non-compliances and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.

3.2.3 Further, the Law Committee also recommended that for providing for automatic revocation of suspension upon compliance with provisions of rule 10A, 3rd proviso may be inserted in sub-rule (4) of rule 21A of CGST Rules as under:

"Provided also that where the registration has been suspended under sub-rule (2A) for contravention of provisions of rule 10A 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 compliance with the provisions of rule 10A."

3.3 Amendment to sub-rule (6) of rule 59:

3.3.1 It is proposed that in cases where a registered person has not furnished details of a valid bank account under rule 10A or where the said bank account is not validated, the said registered person may not be allowed to furnish the details of outward supplies in **FORM GSTR-1** or using IFF.

3.3.2 Accordingly, the Law Committee has recommended that clause (e) may be inserted in sub-rule (6) of rule 59 to provide for the same, as below:

Rule 59. Form and manner of furnishing details of outward supplies.-

(6).....

.....

*(e) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, or using the invoice furnishing facility if he has not furnished the details of the bank account as per the provisions of rule 10A.*

3.4 Amendment in CGST Rules regarding physical verification of business premises

3.4.1 In the context of various reports of unscrupulous elements obtaining fake registrations and passing on fake ITC, the Law Committee deliberated the issue of strengthening the process of verification of registration applications.

3.4.2. It was deliberated that the physical verification of business premises needs strengthening in high-risk cases. In this regards, Rule 9(1) and rule 25 of the CGST Rules, 2017 are quoted as under:

Rule 9. Verification of the application and approval:

(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of seven working days from the date of submission of the application:

Provided that where –

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit;

Rule 25. Physical verification of business premises in certain cases. –

Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

3.4.3 It was opined that the requirement of physical verification of business premises in the presence of the applicant poses risk of manipulation by unscrupulous applicants making temporary arrangements in anticipation of the officer as well as risk of undue delays in case of wilful absence of the applicant. It was further noted that rule 25 of CGST Rules provide for physical verification before grant of registration only in cases where either Aadhaar authentication has failed or where Aadhaar authentication has not been opted. The said rule does not provide for physical verification before grant of registration in cases where physical verification of place of business is required as per provisions of clause (aa) and clause (b) of sub-rule (1) of rule 9 of CGST Rules in high risk Aadhaar authenticated cases. Accordingly, it may be required to amend rule 25 of CGST Rules to provide for the same.

3.4.4. Accordingly, the Law Committee recommended that the requirement of the presence of the applicant for physical verification of business premises may be done away with. Law Committee also recommended to make a provision in rule 25 for physical verification in high risk cases even where Aadhaar has been authenticated. For this purpose, Rule 9(1) and Rule 25 may be amended as under;

(i) sub-rule (1) of rule 9 may be amended as below:

(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of seven working days from the date of submission of the application:

Provided that where –

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business ~~in the presence of the said person~~, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit;

(ii) Rule 25 may be amended so as to provide for separate procedures for the cases where physical verification of the business premises is required pre-registration and post-registration, as follows:

Rule 25. Physical verification of business premises in certain cases. –

~~Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.~~

*(1) Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in **FORM GST REG-30** on the common portal within a period of fifteen working days following the date of such verification.*

*(2) Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to sub-rule (1) of rule 9, the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in **FORM GST REG-30** on the common portal at least five working days prior to the completion of the time period specified in the said proviso.*

4. Further, the above amendments in CGST Rules referred in Para 3.1, 3.2 and 3.3 may be notified once the functionality for the same is made available on the portal by GSTN.

5. Accordingly, the agenda is placed before the Council for approval.

Agenda Item 3(xii): Clarification on TCS liability under Sec 52 of the CGST Act, 2017, in case of multiple E-commerce Operators (ECOs) in one transaction

Reference has been received from the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry requesting to issue necessary clarification regarding TCS liability under section 52 of the CGST Act, 2017, in case of multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC).

2. Context

2.1 Open Network for Digital Commerce (ONDC) is an initiative by DPIIT, Ministry of Commerce aimed at democratising digital commerce by establishing an interoperable open network for all aspects of the exchange of goods and services. ONDC is based on open specifications and open network protocols. It is a shift from the traditional paradigm of e-commerce in that it is not dependent on any specific platform and technology, but rather on a network of platforms/applications which are interoperable. ONDC enables these diverse entities to interact with each other to provide a seamless e-commerce experience for buyers and sellers, irrespective of the platform/application they use to be digitally visible/ available.

2.2 One critical feature of the ONDC Network's architecture is that the functions of the e-commerce platform/marketplace can be unbundled and managed by separate entities. So buyer-side platforms (called Buyer Apps) handle solely buyer-side functions - for example, customer on-boarding, search and discovery, product selection and placing the order. Correspondingly, seller-side platforms (called Seller Apps) handle solely seller-side functions - such as merchant on-boarding, catalogue management, order flow management etc. Seller-side platforms can operate as pure-play marketplaces (Marketplace Seller Apps) enabling diverse sellers to offer their products / services, or as inventory sellers (Inventory Seller Apps).

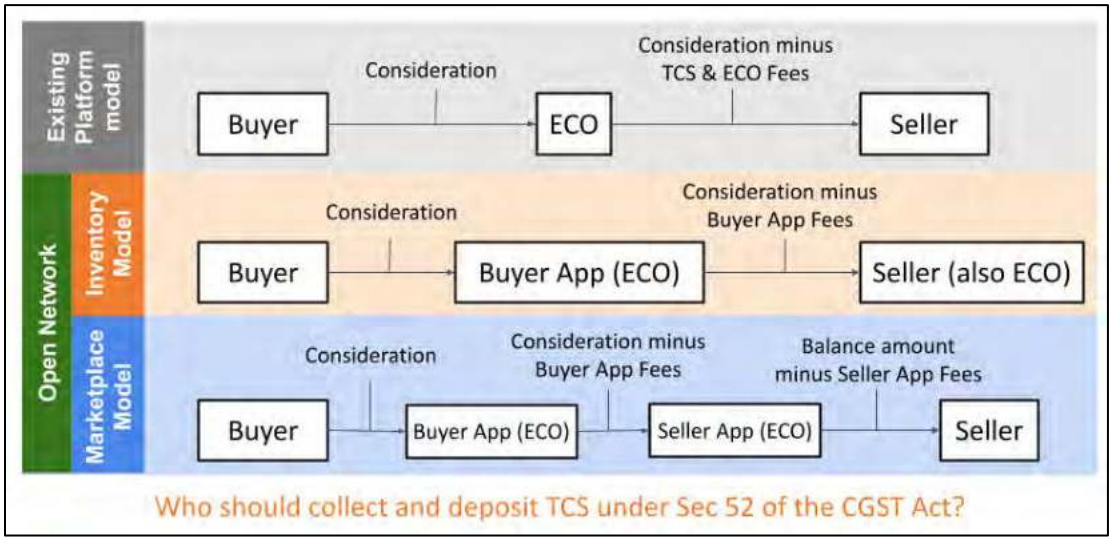
2.3 All transactions are between a buyer and seller which are enabled through Buyer App and Seller App. The fees and commissions against these transactions may be charged by the two platforms as per mutually acceptable terms. The role of ONDC is to provide interoperability for these platforms through its protocol specification to enable these entities to transact seamlessly. ONDC is not a party to any transaction and it does not have any visibility to any transaction.

2.4 One salient difference between the ONDC model and existing e-commerce models is that in the ONDC Network, there can be two intermediaries between the buyer and seller, where in traditional e-commerce there typically is only one intermediary operating a closed platform connecting the buyer and seller. With the new business architecture, and with participation from a broader cross-section of the industry - especially by a large number of small and medium enterprises – clarity has been sought regarding the TCS obligations in case of ONDC model of multiple ECOs.

3. TCS obligations in case of multiple Electronic Commerce Operators:

3.1 In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS under Sec 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.

3.2 In the case of the ONDC Network, there can be multiple ECOs in a transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer side ECO (Buyer App) could collect consideration, deduct their commission and pass on the consideration to the seller side ECO (Seller App).



3.3 In this context, DPIIT has sought clarity as to which of the ECOs is required to deduct TCS under section 52 of CGST Act, as in the ONDC model, both Buyer App and Seller App qualify as ECO as per Section 2(45) of the CGST Act. DPIIT has further requested for either issuance of a clarification through a circular or appropriate amendment in provisions of CGST Act and CGST Rules and the concerned forms to clarify the matter.

4. The matter has been examined as under:

4.1 Clause (44) of Section 2 of CGST Act defines "electronic commerce" to mean the supply of goods or services or both, including digital products over digital or electronic network. Clause (45) of Section 2 defines "electronic commerce operator" to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Further, Section 52 of CGST Act inter alia provides that every electronic commerce operator, not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

4.2 The issue of liability to deduct TCS has been clarified in “FAQs on TCS under GST” dated 28.12.2018 in the context of multiple ECOs, as below:

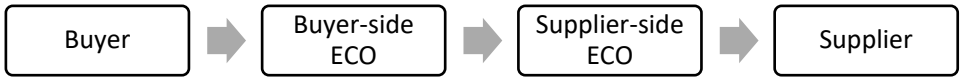
Sr. No.	*Question*	*Answer*

28.	*Under multiple ecommerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. Under such circumstances, which e-commerce operator should be liable to collect TCS?*	*TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.*

4.3 In a situation where multiple ECOs are involved in a transaction through ECO platform, the buyer-side ECO may not have the requisite details of the supplier and thus may not be in a position to collect TCS and make other compliances of ECO under section 52 of CGST Act read with the provisions of CGST Rules. On the other hand, the supplier-side ECO will have the requisite details of the supplier and will also be releasing the payment to the supplier for the supply made through the said ECO and therefore, will be in a position to comply with the requirements cast upon an ECO under section 52 of CGST Act read with provisions of the CGST Rules.

5. In view of the above, the Law Committee in its meeting held on 24.05.2023 recommended that it may be clarified through a circular that in a situation where multiple ECOs are involved in a single transaction through ECO platform, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him. Accordingly, the following may be clarified through a circular (draft circular is enclosed as **Annexure A**):

Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?

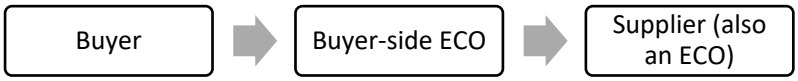


Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Issue 2: **In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?**



Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

6. It is further mentioned that in-principle approval was granted by GST Council in 47th meeting inter alia for waiver of requirement of mandatory registration under section 24(ix) of CGST Act for person making intra-state taxable supply of goods through ECOs, subject to certain conditions. In order to implement the same, issuance of notifications under section 23(2) and section 148 of CGST Act, 2017 has also been recommended by the Council in its 48th meeting. As per the recommendations of the Council, the same is to be implemented w.e.f. 01.10.2023. However, it is felt that the said draft notification also needs to cover the situations involving model of multiple ECOs in a single supply of goods through ECO platform. Law Committee deliberated on the issue in its meeting held on 24.05.2023 and recommended that the said draft notification, as approved by the Council, may be amended further to provide for situations involving multiple ECOs, as suggested in **Annexure B** (the proposed amendment is shown in red).

7. Accordingly, the proposals in para 5 & 6 are placed for approval of the Council.

Annexure A

Circular No.--/--/2023-GST

F. No. CBIC-20006/8/2023-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
*****

New Delhi, dated the -- May, 2023

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 TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction-reg.

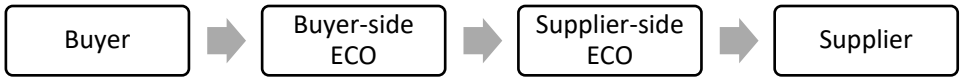
Reference has been received seeking clarification regarding TCS liability under section 52 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), in case of multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC).

2.1 In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS under Sec 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.

2.2 In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO. In this context, clarity has been sought as to which ECO should deduct TCS and make other compliances under section 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Section 2(45) of the CGST Act.

3. 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 CGST Act, hereby clarifies the issues as under:

Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?

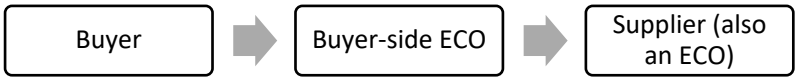


Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Issue 2: **In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?**



Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

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

5. 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)

*****

ANNEXURE B

[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-- October, 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) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the electronic commerce operator who is required to collect tax at source under section 52 (hereinafter referred to as the said electronic commerce operator) as the class of persons who shall follow the following special procedure in respect of supply of goods made through it by the persons exempted from obtaining registration in accordance with Notification No. --/2022- Central Tax, dated the -- October, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. ---(E), dated the -- October, 2022 (hereinafter referred to as the said person):-

(i) the said electronic commerce operator shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;

(ii) the said electronic commerce operator shall not allow any inter-State supply of goods through it by the said person;

(iii) the said electronic commerce operator shall not collect tax at source under sub-section (1) of section 52 in respect of supply of goods made through it by the said person; and

(iv) the said electronic commerce operator shall furnish the details of supplies of goods made through it by the said person in the statement in **FORM GSTR-8** electronically on the common portal.

Explanation: In a situation where multiple electronic commerce operators are involved in a single supply of goods through ECO platform, for the purpose of this notification, "the said electronic commerce operator" shall mean the electronic commerce operator who finally releases the payment to the said person for the said supply made by the said person through him.

[F. No. CBIC-20006/8/2023-GST]

(Alok Kumar)
Director

Agenda Item 3(xiii): Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

Representations have been received from trade and industry that as a common trade practice, the original equipment manufacturers /suppliers offer warranty for the goods / services supplied by them. During the warranty period, replacement goods /services are supplied to customers free of charge and as such no separate consideration is charged and received at the time of replacement. It has been represented that suitable clarification may be issued in the matter as unnecessary litigation is being caused due to contrary interpretations by the investigation wings and field formations in respect of GST liability as well as liability to reverse ITC against such supplies of replacement of parts and repair services during the warranty period without any consideration from the customers.

2. In this regard, Tamil Nadu AAR in case of South Indian Federation of Fishermen Societies vide order no. 07/AAR/2022 dated 28.02.2022 ruled that supply of materials and labour, while rendering warranty services during the warranty period free of cost, does not attract GST separately. The AAR upheld the contention of the applicant as under:

> "*Further, they have stated that the value of materials to be supplied and service provided during warranty period are taken into account and included in the sale price on which GST has been duly paid. The applicant has submitted that consideration received on original supply of fishing vessels includes the consideration for the promise to repair or replace the machines during warranty period without any additional charge. As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the replacement of the goods and service rendered during the warranty period without consideration does not attract GST separately."*

3. Reference is also invited to FAQs on IT/ ITeS sector issued by CBIC, wherein the relevant question has been answered as under:

> ***Question 20: What would be the tax liability on replacement of parts (no consideration is charged from a customer) under a warranty and whether the supplier is required to reverse the input tax credit?***
>
> ***Answer****: As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse the input tax credit on the parts/components replaced.*

4. Despite such clarification and AAR rulings, it appears field formations are raising enquiries in the matter. In view of the same, the issue was deliberated by the Law Committee in its meetings held on 05.12.2022, 10/11.04.2023, 24.05.2023 and 14/15.06.2023. The Law Committee recommended that, for uniformity of implementation, the issue may be clarified through a circular (draft circular enclosed as **Annexure**), as under:

S. No.	Issue	Clarification
1.	There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services. Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?	The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
2.	Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?	In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.
3.	Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?	There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer. In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer. However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.

4.	In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts ?	(a) There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same. (b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty. (c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.
5.	Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?	In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017. Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.
6.	Sometimes companies provide offers of Extended warranty to the customers which can be	**(a)** If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty

	availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. **(b)** However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract(i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)

5. Accordingly, the proposal in para 4 is placed for approval of the Council.

*****

Annexure

Circular No. …../…/2023-GST

F. No. CBIC-XX/XX/2023-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the XX July, 2023

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 availability of ITC in respect of warranty replacement of parts and repair services during warranty period – Reg.

Representations have been received from trade and industry that as a common trade practice, the original equipment manufacturers /suppliers offer warranty for the goods / services supplied by them. During the warranty period, replacement goods /services are supplied to customers free of charge and as such no separate consideration is charged and received at the time of replacement. It has been represented that suitable clarification may be issued in the matter as unnecessary litigation is being caused due to contrary interpretations by the investigation wings and field formations in respect of GST liability as well as liability to reverse ITC against such supplies of replacement of parts and repair services during the warranty period without any consideration from the customers.

2. The matter has been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

S. No.	Issue	Clarification
1.	There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services.	The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair

	Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?	services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
2.	Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?	In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.
3.	Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?	There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer. In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer. However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
4.	In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts ?	(a) There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same. (b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer

		during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty. (c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.
5.	Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?	In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017. Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.
6.	Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	**(a)** If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. **(b)** However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract(i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)

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(xiv): Amendments in CGST Rules consequent to amendment in CGST Act vide Finance Act 2023

The Finance Act, 2023 has carried out amendments in provisions of the CGST Act, 2017, some of which require corresponding rules for implementation. Law Committee in its various meetings deliberated on the rules to be framed and amended for smooth implementation of the law amendments carried out through Finance Act, 2023. Accordingly, Law Committee has recommended for incorporating the said rules in the CGST Rules, 2017. The following paragraphs provide details of the requisite rule amendments which require deliberation of the GST Council:

2. Rule corresponding to the Explanation to section 17(3) of CGST Act, 2017

2.1 GST Council in its 47th meeting observed that as with effect from 01.02.2019, paragraph 8(a) had 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 duty-free shops (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 input tax credit (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 Council to extend the benefit of refund in respect of supplies made from Arrival DFS.

2.2 In view of this, Council recommended that 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 of CGST Act in the value of exempt supply by substituting Explanation to sub-section (3) of section 17 of CGST Act, 2017 as 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."

2.3. In view of said recommendations of GST Council, Explanation to sub-section (3) of section 17 of CGST Act, 2017 was amended by the Finance Act, 2023 accordingly. Clause (b) of the said amended Explanation refers to the value of such activities or transactions as may be prescribed in respect of paragraph 8(a) of Schedule III of CGST Act, 2017, which shall not be excluded from the exempt supply.

2.4. Accordingly, the Law Committee in its meeting held on 14.06.2023 and 15.06.2023 recommended that the activities or transactions of paragraph 8(a) of Schedule III of CGST Act, the value of which shall not be excluded from exempt supply as per amended Explanation to sub-section (3) of section 17 of CGST Act, 2017, need to be prescribed by amending CGST Rules, 2017 by way of Insertion of **Explanation 3 to rule 43** thereof, as under:

Explanation 3:- For the purpose of Rule 42 and this rule, the value of activities or transactions in respect of paragraph 8(a) of Schedule III of the Act which is required to be included in the value of exempt supplies in accordance with clause (b) of Explanation to sub-section (3) of section 17 of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.

3. Amendment to rule 162 of CGST Rules 2017

3.1 Vide Finance Act 2023, section 138 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) has been amended to provide for an amount ranging from twenty-five percent of the tax involved to hundred percent of tax involved for compounding of offences. Further, sub-section (2) of section 138 of CGST Act, 2017 provides for prescribing such compounding amount with respect to various offences through CGST Rules, 2017. Therefore, it is required that a new sub-rule may be inserted in rule 162 of the CGST rules, 2017 in which the compounding amount shall be prescribed on the lines of rule 5 of Central Excise (Compounding of offences) Rules, 2005. The proposed sub-rule 3A, to be inserted in rule 162 of CGST Rules, as recommended by the Law Committee in its meeting held on 14.06.2023 and 15.06.2023 is as given below:

"3A. The compounding amount shall be determined under sub-rule (3) as per the Table given below: -

TABLE

S. No.	**Offence**	**Compounding amount if offence is punishable under clause (i) of sub-section (1) of section 132**	**Compounding amount if offence is punishable under clause (ii) of sub-section (1) of section 132**
(1)	(2)	(3)	(4)
1	Offence specified in clause(a) of sub-section (1) of section 132 of the Act	Up to seventy-five per cent of the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken, subject to minimum of fifty per cent of such amount of tax evaded or the amount of input tax credit wrongly availed	Up to sixty per cent of the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken, subject to minimum of forty per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of
2	Offence specified in clause(c) of sub-section (1) of section 132 of the Act		
3	Offence specified in clause(d) of sub-section (1) of section 132 of the Act		
4	Offence specified in clause(e) of sub-section (1) of section 132 of the		

	Act	or utilized or the amount of refund wrongly taken.	refund wrongly taken.
5	Offence specified in clause(f) of sub-section (1) of section 132 of the Act	Amount equivalent to twentyfive per cent of tax evaded.	Amount equivalent to twentyfive per cent of tax evaded.
6	Offence specified in clause(h) of sub-section (1) of section 132 of the Act	.	
7	Offence specified in clause(i) of sub-section (1) of section 132 of the Act		
8	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of sub-section (1) of section 132 of the Act	Amount equivalent to twenty-five per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken.	Amount equivalent to twenty-five per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken.

Provided that where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

3.2 It is also added that the condition of applicant having co-operated in the proceedings as mentioned in sub-rule (3) of rule 162 of CGST Rules, 2017, becomes very subjective to ascertain and therefore, may not be required. The person who has already paid tax, interest with applicable penalty and willing to pay compounding amount as well as making **full and true disclosure of facts relating** to **the case** can be considered to be a co-operative person.

3.3 Accordingly, the Law Committee in its meeting held on 14.06.2023 and 15.06.2023 recommended that the said condition of person having co-operative in the proceedings before the Commissioner may be deleted from sub-rule (3) of rule 162, as below:

"3. The Commissioner, after taking into account the contents of the said application, may, by order in FORM GST CPD-02, on being satisfied that the applicant ~~has cooperated in~~

~~the proceedings before him and~~ *has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount, and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application*."

4. Consent Based Sharing of Information

4.1 The interface between taxpayers and the tax administration in electronic form through a common portal has made available valuable data that can be used for other purposes for the benefit of taxpayers and other stakeholders. 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.

4.2 The GST Council in its 47th meeting held on 28th-29th June, 2022 recommended that the provisions may be made in CGST Act to allow sharing of this data with the consent of the supplier and also of the recipient in certain cases. Accordingly, a new section 158A was inserted in the CGST Act, 2017 through Finance Act, 2023 so as to provide for prescribing manner and conditions for sharing of the information furnished by the registered person in his return or in his application of registration or in his statement of outward supplies, or the details uploaded by him for generation of electronic invoice or E-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.

4.3 To implement the provisions of the newly inserted section 158A, rules needs to be framed and implemented. The matter was deliberated by the Law Committee in its meeting held on 14.06.2023 and 15.06.2023. The Law Committee has recommended insertion of new Rule 163 in CGST Rules, 2017 for this purpose, the draft of which is enclosed as **Annexure-I** with this agenda note.

4.4 Also, as per provisions of Section 158A, it needs to be notified as to which systems will be authorised for data sharing. The same was deliberated by the Law Committee in its meeting held on 14.06.2023 and 15.06.2023 and it recommended that account aggregators may be notified as the systems with which information may be shared by the common portal based on consent under Section 158A of the CGST Act, 2017. The draft notification under section 158A of CGST Act in this regard is enclosed as **Annexure-II** with this note.

5. It is also proposed that the rules referred in Para 2,3 and 4 above as well as notification referred in Para 4 above may be notified once the said concerned provisions of the Finance Act, 2023 come into effect.

6. The agenda note, along with annexures, is placed before the Council for deliberation and approval.

Annexure-I

163. Consent based sharing of information

(1) Where a registered person desires to share the information furnished in—

(a) FORM GST REG-01 as amended from time to time;

(b) return in FORM GSTR-3B for certain tax periods;

(c) FORM GSTR-1 for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time,

with a system referred to in subsection (1) of section 158A (hereinafter referred to as "requesting system"), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.

(2) The registered person shall give his consent for sharing of information under clause (c) of sub-rule (1) only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.

(3) The common portal shall communicate the information referred to in sub-rule (1) with the requesting system on receipt of the consent of the said registered person, details of the tax periods or the recipients, as the case may be, from the requesting system.

Annexure-II

[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. /2023 – Central Tax

New Delhi, the XXX, 2023

G.S.R....(E),— In exercise of the powers conferred by section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, notifies "Account Aggregators" as defined in Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016 issued by the Reserve Bank of India under Reserve Bank of India Act, 1943 as the systems with which information may be shared by the common portal based on consent under Section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017).

2. This notification shall come into force with effect from the dd day of mmmm, 2023.

[F. No.]

(<Name>)

Under Secretary to the Government of India

*****

Agenda Item 4: Recommendations of the Fitment Committee for the consideration of the GST Council

This agenda note deals with proposals regarding GST rates on supply of goods and services. The proposed changes in GST rates emanate from the recommendations made by the Fitment Committee.

2. Briefly stated, representations/recommendations have been received from various stakeholders including Ministries and other offices of Centre and States, seeking changes in GST rates and certain clarifications regarding GST rates applicable on supply of certain goods/services.

3. The Fitment Committee met on 3rd April, 25th April, 29th May and 9th June, 2023 and had detailed discussions on recommendations received from various stakeholders 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 issues. On a few issues, Fitment Committee was of the view that further examination would be required before making any recommendation to the GST Council.

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 issuing clarifications in relation to goods – Annexure-I
b. Issues where no change has been proposed by the Fitment Committee in relation to goods – Annexure-II
c. Issues deferred by the Fitment Committee for further examination in relation to goods – Annexure-III
d. Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services – Annexure-IV
e. Issues where no change has been proposed by the Fitment Committee in relation to services – Annexure-V
f. Issues deferred by the Fitment Committee for further examination in relation to services – Annexure-VI

5. The proposals, as contained in para 4 above are placed before the GST Council for consideration.

(a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to goods – Annexure I

Annexure-I

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
1	Kachri/ Kachri pappad; Unfried snack pellets manufactured through extrusion process / 1905 90 30	18%	Nil/5% and Regularize for the past periods	• It has been represented that 18% GST rate on un-fried pellets is too high because in common parlance it is treated as pappad. Further goods under HS 1905 90 30 was at Nil rate in central excise regime and was at 6%/4%/Nil VAT rates in States under VAT regime. • Circular no. 189/01/2023-GST dated 13.01.2023 was issued based on the recommendation of the GST Council in its 48th Meeting clarifying the classification of extruded products such as "fryums" under CTH 1905 90 30 and by virtue of the classification, the goods attract 18% GST. • Pappad, by whatever name it is known, except when served for consumption, is exempt from GST vide Sl. No. 96 of notification No.2/2017-Central Tax (Rate). • As per Market Survey in Delhi and Ahmedabad by CGST field formation 'papad' and 'fryums'/'kachri' are purchased as separate items by the consumers, and both terms are generally not used interchangeably. • The key difference between the extruded or expanded snack pellets attracting 18% GST and these products appears to be that while the first is manufactured through mechanised process of extrusion and expansion resulting in ready to eat form, the latter needs to be fried. • Fitment Committee recommended to reduce GST to 5% on Uncooked/unfried extruded products by whatever name called. • Fitment Committee also recommended to regularize for past period on 'as is where is' basis due to genuine doubts.
2.	Fish Soluble Paste (HS 2309)	18% under residual entry	5% & Retrospective exemption	• Fish soluble Paste is a by-product produced while producing fish meal and fish oil. • It attracts 18% GST under the residual entry. • Fishmeal attracts GST@5%, • *Vide* S. No. 102 of notification No. 2/2017- Central

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				Tax (Rate) dated 28.6.2017, GST exemption is available only to **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). • Retrospective GST exemption was given till 30.09.2019 to Fishmeal and unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil, on the recommendation of the 37th and 45th GST Council meetings respectively. • Since the final product fish meal attracts 5%, there appears to be merit in the argument that by waste generated as a by-product during the process of manufacture of fishmeal should not attract 18%. • Fitment Committee recommended to reduce GST rate on Fish Soluble Paste (2309) to 5% . • Fitment Committee also recommended to regularise the matter for the past period on "as is basis" in view of genuine interpretational issues.
3.	Dinutuximab (Quarziba) /chapter 30	12% IGST	Nil	• Request is for IGST exemption on cancer medicine, Dinutuximab (Quarziba) imported by individuals for personal use. • The estimated cost of the medicine is around Rupees sixty-three lakhs and the same has to be imported. • Patients and their kins are finding it difficult to pay the IGST @12% since the medicine is already very expensive and the cost of medicine is met through crowdfunding. • Some Ad-hoc exemptions have already been provided on case-to-case basis • Fitment Committee recommended to exempt IGST on Dinutuximab (Quarziba) medicine imported for personal use.
4.	Medicines and Food for Special	5%/12 % IGST	Nil	• As part of post Budget 2023-24, BCD exemption have been given to drugs and Food for Special Medical Purposes (FSMP) when imported for

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
	Medical Purposes (FSMP) used in the treatment of rare diseases			personal use for treatment of rare diseases enlisted in the National Policy for Rare Disease subject to existing conditions (*individual importer has to produce a certificate from central or State Director Health Services or District Medical Officer/Civil Surgeon of the district)* • The BCD exemption currently available for drugs used in treatment of rare diseases imported by Centres of Excellence for Rare Diseases or any person or institution on recommendation of any of the listed Centre of Excellence was also expanded to include Food for Special Medical Purposes (FSMP) • These exemptions have been given based on recommendations of Ministry of Health and family Welfare (MoHFW). • Fitment committee recommended to exempt IGST on medicines and Food for Special Medical Purposes (FSMP) used in the treatment of rare diseases enlisted under the National Policy for Rare Diseases (NPRD),2021 which are imported for personal use subject to existing conditions and when imported by Centres of Excellence or any person or institution on recommendation of any of the listed Centre of Excellence.
5.	Trauma, Spine and Arthroplasty implants/ CTH - 9021	-	-	• As per S. No. 221 of Schedule II of notification No. 01/2017-CT Rate 12% GST rate was applicable on the following goods falling under HSN heading 9021: "*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"* • As per S. No. 257 of Schedule I of notification No. 01/2017-CT Rate 5% GST was applicable on the following goods falling under HSN heading 9021 as Assistive devices, rehabilitation aids and other goods for disabled:

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				"Orthopaedic appliances falling under heading No. 90.21 of the First Schedule" • Duality of rates on similar items falling under heading 9021 was causing confusion and request had been received for issuance of clarification. • In order to bring uniformity, in the 47th GST Council, the GST rate of 5% was fixed on all goods falling under heading 9021 vide S. No. 255A of Schedule I of notification No. 01/2017-CT Rate: *Orthopaedic appliances, such as crutches, surgical belts, and trusses; 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 hearing aids]* • Hearing aids attract Nil GST rate under S. No. 142 of notification No. 02/2017-CT Rate • The present request is for issue of clarification for period prior to the 18.07.2022 when the GST rate of 5% was notified. • Fitment Committee recommended to regularize the matter for the period prior to 18.07.2022 on "as is basis" in view of genuine interpretational issues.
6.	Clarify that Raw cotton supplied by agriculturists to Cooperatives is not taxable under RCM	5%	Nil	• Supply of raw cotton is subject to GST on RCM basis • The request is to issue clarification that raw cotton supplied by agriculturists to Cooperatives is not taxable under RCM as there is no sale. • The cooperative societies are discharging GST on the sale of Cotton bales (after removing pods, ginning and processing) in the open market on "Forward Charge" basis • Section 2(84) (i) of the CGST Act, 2017 defines 'person' as including "a co-operative society registered under any law relating to co-operative

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				societies". As per Section 7 (1) (aa) of the CGST Act "supply" includes "the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration." Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. • Seen in the light of the legal provisions, the transfer of cotton from farmers to cooperatives is clearly a taxable supply and such supply of raw cotton by farmers to the cooperatives (being a registered person) attracts 5% GST under reverse charge basis. • Fitment committee recommended to clarify that supply of raw cotton, including kala cotton, from agriculturists to Cooperatives is a taxable supply and such supply of raw cotton by agriculturist to the cooperatives (being a registered person) attracts 5% GST under reverse charge basis. • Fitment Committee also recommended to regularize for the past periods on "as is basis" for in view of genuine doubts for cooperatives.
7.	Consequential changes post New Foreign Trade Policy 23 in notifications			• Foreign Trade Policy 2023-28 (FTP 2023-28) came into force with effect from 1st April, 2023 vide Notification No. 1/2023 dates 31st March, 2023. • Several schemes including Advance Authorisation (AA), Export Promotion of Capital Goods (EPCG), Duty Free Import Authorisation (DFIA), Duty Drawback Scheme (DBK), Rebate on State and Central Taxes and Levies (RoSCTL), Remission of Duties and Taxes on Exported Products (RoDTEP) are also continued in the new FTP 2023-28. • Further, the conditional exemption with respect to supply from Nominated Agency to registered supplier was provided in order to avoid cash flow issues for

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				the gems & jewellery industry as per the recommendations of the GST Council in its 31st meeting. This is also a technical change so as to involving updating the reference to relevant paragraphs of FTP in force. • Consequential changes will need to be carried out in notifications which would be technical in nature such as cross-referencing to new Trade policy.
8.	Issue suitable clarification of applicable GST rate of 5% on imitation zari thread as decided in the 14th and 15th GST Council meeting to avoid ambiguity prevailing on the applicable rate of GST on such goods	-	-	• In the 15th Council meeting, the Council agreed to tax embroidery or zari articles i.e., imi, zari, kasab, saima, dabka, chumki, gota, sitara, naqsi, kora, glass beads, badla, gizai at the rate of 5%. • Accordingly, notification was issued prescribing 5% GST rate on embroidery or zari articles classified under CTH 5809 and 5810. Thus, by virtue of the CTH, only embroidery articles, embroidery in piece, in strips or in motifs got covered and not imitation zari thread, which is classified under CTH 5605 • Certain doubts were raised regarding the classification and applicable GST rate on kasab thread (a metallised yarn) as yarn falling under heading 5605 attracts 12% GST. The matter was placed before the 28th GST Council where it was recommended to explicitly clarify that real zari kasab (thread) manufactured with silver wire gimped (vitai) on core yarn namely pure silk and cotton and finally gilted with gold would attract 5% GST. A circular was accordingly issued wherein it was also clarified that any imitation zari would not be covered and further, metallised yarn including kasab attracts 12% GST rate. • There appears to be confusion in the trade as imitation zari thread such as kasab, dabka are mentioned in the 5% entry. • It was seen that the embroidery articles including imitation zari embroidery articles are taxed at 5% but the input kasab (thread) is at 12%. • Fitment Committee recommended to reduce GST rate to 5% on imitation zari thread or yarn known by any

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				name in trade parlance. Further, given the confusion in the trade regarding the applicable rate, Fitment Committee also recommended that the issue may be regularised for the past period on as is where is basis.
9.	LD slag	18%	5%	• Currently, Slag generated from basic oxygen furnace (BOF) or Linz-Donawitz (LD) attracts GST @ 18% while other by-products such as Blast Furnace Slag (BFS) Slag and Fly Ash attracts 5% GST. • LD Slag is one of the recyclable wastes generated in integrated Steel plants. It is produced during the separation of molten Steel Slag from impurities in steel-making furnaces. • LD slag poses an environmental problem as it is not being used and is getting accumulated over the years. The total generation rate of LD slag is approx. 200kg/ton of crude steel in India. Out of this only 25% is being reused/recycled in India. It has been observed that, 50% of slag has been used for the road project, for sintering and iron-making recycling in steel making plant. With the rapid growth of industrialization, the available land for dispose of large quantities of metallurgical slag like LD slag at a landfill site is reducing and the disposal cost becomes increasingly higher. Thus, LD slag poses an environmental problem as it is not being used and is getting accumulated over the years • The GST rate on BF Slag/Fly Ash was reduced to 5% in the 23rd GST Council meeting based on the reason that it is an environmentally harmful product and its re-usage needs to be promoted. • The issue of reduction of GST on LD slag to 5% was taken up in the 48th GST Council meeting but no change was recommended as it was felt that cement manufacturers will get ITC for GST paid on purchase of LD slag. • However, considering that the consumption of LD slag needs to be encouraged for better utilization of this waste and protection of environment, Fitment

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				Committee recommended to reduce the GST rate to 5% at par with Blast Furnace Slag (BFS) Slag and Fly Ash.
10.	Amend Exemption Notification No. 50/2017 – Customs dated 30.06.2017 to include RBL Bank			• IGST exemption is available on imports of gold, silver or platinum by specified banks and other entities mentioned in List 34 of S. No. 359A of Notification No. 50/2017 – Customs dated 30.06.2017. • The GST Council, in its 22nd meeting dated 06.10.2017, had recommended that exemption from IGST was to be given to nominated agencies i.e., PSUs and authorized Banks mentioned in Para 4.41 of FTP 2015-2020 (read with Appendix- 4B). • In the 37th GST Council Meeting, dated 20.09.2019, the Council did not recommend inclusion of ICBC and RBL Bank Ltd in the said List 34 as 'Export Committee' had not recommended their inclusion in the said list. • Directorate General Export Promotion has conveyed that inclusion of PSU or Bank approved by RBI is not required to be discussed in Export Committee and has recommended for amending the List 34 suitably to include the name of RBL and to also delete the name of Banks/entities which no longer exists in Appendix 4B of HBP as several banks which are not part of Appendix -4B of HBP are still mentioned in List 34 of the Notification 50/2017-Cus. • RBL Bank is a authorized Bank mentioned in Para 4.40 of FTP 2023 (read with Appendix- 4B). • Fitment Committee recommended to update list 34 in notification 50/2017-Customs so as to include RBL bank and ICBC bank and update the list no. 34 as per revised Appendix 4B of FTP 2023 subject to confirmation from DGEP and DGFT.
11.	Applicability of compensation cess on	22%		• During the discussion in the 48th meeting of GST council held in December,2022 on agenda items relating to issuance of clarification on compensation cess leviable on SUVs, upon suggestion by few of

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
	MUX/XUV vehicles with length > 4000 mm, engine capacity > 1500cc and ground clearance > 170 mm			the members to deliberate about compensation cess on other utility vehicles such as MUV, the Council directed the Fitment Committee to examine the same. • Based on recommendation of the GST Council in its 21st Meeting held in Sept, 2017 a higher rate of compensation cess of 22% was notified on "*Sports Utility Vehicles (SUVs) (of length more than 4-metre, engine capacity more than 1500cc and ground clearance 170 mm)"* • It is seen that there were other utility vehicles that satisfy the conditions of Length greater than 4000 mm, Engine capacity greater than 1500 cc and Ground clearance more than 170 mm, but are popularly called as Multi Utility Vehicles (MUV) or multipurpose Vehicles or Crossover Utility Vehicles (XUVs). • Fitment Committee recommended to amend the entry to include all utility vehicles by whatever name called provided they met the parameters of Length greater than 4000 mm, Engine capacity greater than 1500 cc and Ground clearance more than 170 mm. • Fitment Committee also recommended to insert an Explanation to clarify for the purposes of the said notification entry "Ground Clearance" in entry 52B means Ground Clearance in un-laden condition.
12.	Compensation Cess rate on Pan Masala, chewing tobacco, etc.			• To implement the recommendations made by GST Council in its 49th meeting held on 18.02.2023 which accepted the report of Group of Ministers (GoM), the levy of compensation cess was converted from ad valorem tax to specific tax-based levy to boost the first stage (manufacturer level) collection of revenue in respect of Pan Masala, chewing tobacco, etc • The rates are linked to RSP for such products. • However, representations have been received regarding challenges faced in determining the rate of compensation cess in cases where it is not legally not

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				required to declare RSP. • Fitment Committee recommended to notify the earlier ad valorem rate as was applicable on 31st March 2023 for such goods by amending the said Notification.
13.	Desiccated coconut/ 0811100	5%	Exempt supply of desiccated coconut from 12% tax for the period 01.07.2017 to 27.7.2017	• Vide corrigendum issued on 27-07-2017 to notification 01/2017-CT(R) dated 28.06.2017, dessicated coconut was declared as a taxable product at 12% GST. • Subsequently, in the 23rd GST Council meeting held in November 2017, the GST Council had recommended to reduce the GST rate from 12% to 5%. • Based on corrigendum issued in July 2017, desiccated coconut manufacturers started collecting GST at 12% w.e.f from 28.07.2017. However, they have requested to regularize the intervening period between issue of original notification and issue of corrigendum prescribing 12% GST rate. • Given the fact that between the period 1.7.2017 to 27.7.2017 there was no specific entry for dessicated coconut, it is possible that the suppliers may not have collected GST from consumers. • Fitment Committee recommended to regularize the period 01.07.2017 to 27.07.2017 on "as is where is" basis on account of genuine doubt.
14.	Areca Leaf Plates and Cups (Chapter 46)	Nil	exempt	• Currently, plates and cups made up of all kinds of leaves/ flowers/bark are already exempt vide Sl No. 114C of notification 2/2017-Central Tax (Rate) dated 28.6.2017. • In the 37th GST Council meeting held on 20.9.2019, GST Council had recommended the reduction in rate of cups and plates made of leaves of areca tree from 5% to nil. • No action required

(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/ IGST rate	Requested GST rate	Comments
1.	Agro-based biomass pellets	5%	Nil	• Biomass briquettes or solid bio fuel pellets, falling under Any Chapter, attract GST @5% vide Sl. No. 264 of S-I of CT(R) notification. • The request has been justified on the ground that Ministry of Power has mandated to use 5% of biomass co-firing in all coal based Thermal Power Plants. Due to this, the demand for biomass pellets has increased up to 1 lakh MT/day. However, the present capacity is only around 7000-8000 MT/day. Therefore, GST exemption to agro-based biomass pellets would be great step to boost the growth of this sector. • The 5% rate has been prescribed on the basis of recommendation of the 22nd GST Council Meeting (for Biomass briquettes) in October 2017 and 28th GST Council Meeting (for solid bio fuel pellets) in July 2018. • Thus, Biomass briquettes or solid bio fuel pellets already attract concessional GST rate of 5%. • The request for reduction of GST rate to Nil on solid biofuel pellets / Biomass briquettes or pellets was placed before the GST Council in 37th and 47th GST Council Meeting, and the GST Council did not recommend further reduction in rate to Nil.

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				• Fitment Committee recommended to maintain status quo.
2.	De-Oiled Rice Bran (DORB)/ 2306	Nil	5%	• Prior to the 25th Council Meeting, Rice Bran (HS 2302) for use as feed was at Nil and for other uses was at 5%. • The GST Council in its 25th Meeting held on 18.01.2018, decided to levy 5% GST on Rice Bran, irrespective of end use, and Nil GST on De-Oiled Rice Bran. This was notified w.e.f 25.1.2018. • The request has been justified on the ground that on account of mismatch in GST rates, Rice Bran is sold to animal feed producers directly from the un-organized market or billed as DoRB, so as to avail Nil GST. • The GoM on rate rationalisation in its interim report did not recommend bringing all goods under chapter 23 (other than dog and cat food) to 5% • Fitment Committee recommended to maintain status quo.
3.	Products prepared or manufactured by the inmates of Kerala Prison and correctional Services Department	5%/12%/18%	Nil	• End use based exemption is difficult to administer, is prone to leakages and needs to be discouraged. • It would lead to inverted duty structure on many of these commodities that would disrupt the ITC chain. • Fitment Committee recommended to maintain status quo

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
4.	Bio-fertilizers and other such organic inputs	12%	5%	• Based on the recommendations of the GST Council, in its 25th meeting held in January, 2018, the rate on 12 specified bio-pesticides was reduced from 18% to 12 % vide Notification No. 6/2018-Central Tax (Rate). • In its 31st meeting held in December, 2018, the Council had examined the issue of reduction of GST on agricultural inputs including pesticides, fertilizers and plant growth regulators to 5% but it did not recommend any change to avoid a distortion of the ITC chain and inversion of duty structure which would put domestic manufacturers at a disadvantage. • In its 39th meeting in March, 2020, the Council had examined the issue of rate calibration on fertilizer to 12% in detail but did not recommend any change in rates. • In its 45th and even in the recent 47th Council meeting held in June, 2022, the issue was placed before the Council, but the Council did not recommend any change in the rates of fertilizers or other organic farm inputs. • Fitment Committee recommended to maintain status quo
5.	Sungudi Saree	12%	Nil	• The request has been made to reduce GST from 12% to Nil on the ground that in the manufacture of Sungudi Sarees, about 10,000 families of minority Sourastra Community are engaged. • However, sarees already attract concessional 5% GST.

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				• Exempting GST will have the impact of breaking of ITC chain and will entail end use-based exemption which are prone to misuse. • 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. • Fitment Committee recommended to maintain status quo
6.	Upfront exemption from payment of IGST and refund mechanism to be done away with			• IAEA is seeking exemption from IGST on imports of their equipment. However, section 55 of the CGST Act provides for the refund of GST paid by the IAEA. • Section 55 of the CGST Act states as follows: "The Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions asmay 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, Notification No. 13/2017-IGST (rate) have been issued to give effect to section 55 of the CGST act.

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				• Giving such exemption for a particular organization, for which refund mechanism is already in place will result in similar requests in the future from other organizations, which is not desirable. • Fitment Committee recommended to maintain status quo
7..	Avgas	18%	Nil/1%	• Avgas is the type of aviation fuel used in small piston engine powered aircraft within the general aviation community. • These aircraft are predominantly used by private pilots and flying clubs and for tasks such as flight training. • Pilot training course in India cost about 35-40 lacs from a DGCA approved reputed flight school which is majorly undertaken by upper-middle class strata of the society and Avgas is, therefore not a good for common man purpose. • Further, Avgas is only a component of flying training cost and other major costs includes aircrafts costs, insurance, maintenance, instructors salaries etc. Thus, reducing GST rate on Avgas is not likely to lead to significant reduction in training cost • Further, ITC is available of GST paid on Avgas used for supplying pilot training services. • Fitment Committee recommended to maintain status quo

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
8.	(i) Machinery used in Sericulture Industry (ii) Automatic reeling machinery	18%	5% Nil/5%	• The instant request is for machinery used in Sericulture. Such exemption on machineries will lead to an end-use based exemption which are prone to misuse. • Raw materials for these machineries such as iron steel, plastic, and other metals, in general, attract 18% GST. Reduction in GST to 5% will deepen the duty inversion • The similar issue related to Silk Reeling machineries (8445 40 40) was deliberated in 47th GST Council Meeting and no change was recommended. • Fitment Committee recommended to maintain status quo
9.	All Sports Goods & Fitness Products	12%/18%	5%	• As per the recommendation of the GST Council in its 14th Meeting held on 18.05.2017, sports goods classified under CTH 9506 other than articles of general physical exercise attract GST @ 12% (Sl. No. 230 of schedule II of notification 01/2017-Integrated Tax (Rate) while articles and equipment of general physical exercise, gymnastics etc attracted GST @ 28%. • Subsequently, as a part of the rationalization of the 28% GST rate slab, the GST Council in its 23rd Meeting recommended GST @ 18% (Sl. No. 441 of Schedule III of notification No. 01/2017-Integrated Tax (Rate) for articles and equipment of general physical exercise, gymnastics etc. • The present request has asked for a

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				uniform GST rate of 5% on articles under CTH 9506. • This would lead to an inverted duty structure as most of the inputs for sports goods like steel, rubber etc attract GST @ 18%. • Fitment Committee recommended to maintain status quo.
10.	Mega Power Projects		Nil	• The request has been justified on the ground that with the implementation of GST w.e.f 1st July 2017, the benefit of Terminal Excise Duty refund ceased to exist. Further, the interstate supplies with a concessional CST @ 2% were permitted until then with facilitation of issue of C form. Moreover, incidence of IGST@18% on the imported supplies was an addition to the project cost. • The present request is for introducing concessions based on the lines of those that existed in the Central Excise regime and that exist presently in Customs. • The exemption from Excise duty on submission of Fixed Deposit Receipt (FDR) or Bank Guarantee (BG) in lieu of the availing exemption from payment of duty which was provided vide S. No. 339 of notification No. 12/2012-CE dated 17.03.2012 was superseded by notification No. 11/2017-CE dated 30.06.2017 on inception of GST • Under GST, no exemptions have been provided. • Fitment Committee recommended to maintain status quo

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
11.	Apple Carton Boxes	18%	5%	• Carton Boxes fall under HSN heading 4819. • The matter in respect to the GST rates on the items falling under HSN 4819 was placed before the GST Council in its 45th meeting. • It was observed that the items falling under HSN 4819 like cartons, boxes and cases of non-corrugated paper or paper board attracts a GST rate of 18% and cartons, boxes and cases of corrugated paper or paper board attract a concessional GST rate of 12%. GST Council recommended that all items falling under HSN 4819, irrespective of being corrugated or non-corrugated, shall attract a uniform GST rate of 18%. This change was made effective from 1st October, 2021. • Generally, end-use based exemptions/concessional rates are difficult to administer and are generally litigation-prone. • Nonetheless, in 49th GST Council it was decided that Himachal Pradesh will submit a detailed representation in this regard for examination by the Fitment Committee. • Detailed representation from CCT Himachal Pradesh was presented before the Fitment Committee. • Fitment Committee recommended to maintain status quo
12.	Two-wheeler and four wheeler Flexi Fuel Vehicles (FFV) /CTH 8711	28%	5% for 2-Wheeler and 12% for 4-	• Flexi fuel vehicles (FFVs) have an internal combustion engine and are capable of operating on normal petrol and/or any blend of petrol and

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
	for 2 wheelers & 8703 for 4 wheelers		Wheeler)	ethanol • The present request has given the slightly higher cost of flexi fuel engines as a rationale for GST reduction. • It has been a clear and consistent policy of decarbonizing the transport sector through various policies and initiatives that support Electric Vehicles (EV), which is evident in the lowest tax rate of 5% GST on EVs in addition to PLI Scheme for Auto Sector & Advance Chemistry Cell (ACC) • However, unlike the EV vehicles which is clearly distinguishable and identifiable, this is not the case with flexi fuel vehicles • There is no clear cut 'definition' of flexi fuel vehicle in the Motor Vehicle Act or any allied Acts. • This is likely to lead to mis-classification of vehicles as flexi fuel vehicles for availing benefit of concessional GST rate. • Fitment Committee recommended to maintain status quo
13.	Agricultural products		Nil	• The request to exempt GST on agricultural products and on agriculture- based items to protect the farmers. • However, farmers do not have to pay tax on supply of fresh fruits and vegetables. • The request is general in nature. • Fitment Committee did not recommend any change

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
14.	Two-wheeler and four wheeler Flexi Fuel Vehicles (FFV) /CTH 8711 for 2 wheelers and 8703 for 4 wheelers		Reduction in Compensation Cess on Flexi Fuel Vehicles.	• It has been a clear and consistent policy of decarbonizing the transport sector through various policies and initiatives that support Electric Vehicles (EV), which is evident in the lowest tax rate of 5% GST on EVs in addition to PLI Scheme for Auto Sector & Advance Chemistry Cell (ACC) • However, unlike the EV vehicles which is clearly distinguishable and identifiable, this is not the case with flexi fuel vehicles. • There is no clear cut 'definition' of flexi fuel vehicle in the Motor Vehicle Act or any allied Acts. • This is likely to lead to mis-classification of vehicles as flexi fuel vehicles for availing benefit of concessional GST compensation cess. • As on date, GST Compensation Cess has been extended upto 31st March 2026. • Fitment Committee did not recommend any change
15.	Utensils made of brass	12%	Reduce	• GST rate on raw materials for these utensils such as copper, zinc, tin, iron, steel, other metals and their scrap in general, attract 18% GST. • As a result, there is already inverted duty structure for supply of these utensils. Further reduction in GST rate on utensils will deepen this tax inversion and consequently may lead to accumulation of input tax credit thereby increasing cost of utensils. • Fitment Committee did not

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				recommend any change.
16.	Heavy feedstock, Vacuum Gas Oil (VGS) / Reformates, etc	18%	Nil	• This issue was deferred in last Fitment Committee meetings held in June & September, 2022 as inputs were awaited from MoPNG. Fitment Committee had noted further clarity was needed on the matter regarding the intended use, capacity utilization potential and benefits accruing from heavy feedstock. • The inputs received from MoPNG were discussed in the meeting • Fitment Committee did not recommend any change.
17.	All bakery products manufactured and sold by MSME	5%/18%		• At present, Rusks, toasted bread and similar toasted products, falling under HS 1905 40 00, attract GST @5%. akery products like Pastry, cakes, scuits and other bakers' wares, whether not containing cocoa; communion afers, empty cachets of a kind suitable r pharmaceutical use, sealing wafers, ce paper and similar products [*other than zza bread, khakhra, plain chapatti or ti, bread, rusks, toasted bread and milar toasted product*s] falling under HS 905 attract GST@18%. mall manufacturer/traders in MSME ctor have the option to avail threshold xemption and composition scheme. re-GST incidence on most of these dditional bakery products on which rate duction has been desired was 18% or ore.

S. No	Description/ HSN	Present GST/ IGST rate	Requested GST rate	Comments
				• Providing source-based exemption to MSME sector for specific products like bakery products will be difficult to monitor and cause distortion. • Fitment Committee did not recommend any change.

(c) Issues deferred by the Fitment Committee for further examination in relation to goods – Annexure III

Annexure-III

S. No	Description /HSN	Present GST/ IGST rate	Requested GST rate	Comments
1.	Millet based Products	12% / 18%		• The millet product under consideration 'Millet Mix' consists of 90% millets. **<u>Classification under HS 1102 (at 5%/Nil)</u>** • HS 1102 consists of cereal flours other than flours of wheat or meslin. • **<u>Flours</u>** of this heading may be improved by the addition of very small quantities of **mineral phosphates, anti-oxidants, emulsifiers, vitamins or prepared baking powders (self-raising flour)**. • The instant product contains additives beyond these prescribed additives. • Such flours can be used for making preparations of heading 19.01. • Flours which have been further processed or **had other substances added with a view to their use as food preparations are excluded**. • The instant product undergoes multiple stages of preparation that involves washing, roasting, grounding, addition of additives like cereals, pulses (around 10%), and packaging. • The preparation process and additives qualify it to have been further processed or **had other substances added with a view to their use as food preparations are**

				excluded. **<u>Classification HS 1901 (at 18%)</u>** • Millet Mix is appropriately classifiable under HS 1901 that covers food preparations of flour. • It may be noted that the food preparations need not necessarily be in edible directly condition for it to be classified under HS 1901. • **This heading covers a number of food preparations with a basis of flour, which derive their essential character from such materials whether or not these ingredients predominate by weight or volume.** • **The end product is preparation of millet flour and <u>not millet flour per se</u>.** • The raw material, that is millet flour, undergoes processing and consequent significant value addition that results into a new value-added commercial commodity coming into existence, which is sold at a premium in the market as against flour of millet/roasted millet. • General rules of Interpretation Rule 1 and 3(a) appears to be applicable in the instant dispute. • Further, under 1901, preparations are often used for making beverages, gruels, as food suitable for infants or young children, dietetic foods, etc., by simply mixing with, or boiling in, milk or water. The instant commodity generally has a similar intent of usage and undergoes a similar cooking process. • Classification and tax treatment of

				Millet at par with Chapter 11 goods is likely to affect the classification and applicable tax rate on a large number of similarly placed products/mixes such as idle mix, dosa mix etc entailing significant revenue implication. • Fitment Committee recommended to defer for more in-depth study.
2.	Khari, Cream Rolls [Bakery products]/ HS 1905)		To clarify that Khari and crème roll should get covered under "similar toasted products", which attract 5%	• Currently, concessional GST rate of 5% is applicable on Rusks, toasted bread and other toasted products falling under tariff item 1905 40 00. • Bakery products such as Pastry, Cake, Biscuits, Communion Wafers, etc. [*other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products],* falling under CTH 1905, attract GST rate of 18%. • Fitment Committee examined the issue before the 47th GST Council Meeting and observed that further details regarding the nature of product, process of preparation is required before making any suggestions. Accordingly, the matter was deferred by the 47th GST Council for further examination. • Fitment Committee recommended to defer for more in-depth study
3.	Sugar boiled Confectionary	12%	Clarification may be provided regarding the scope of 'Sugar Boiled Confectionery'.	• Sugar boiled confectionary attract GST at the rate of 12% and Sugar confectionary attract GST at the rate of 18%. • Sugar boiled confectionary has been carved out with a lower GST rate of 12% based on recommendations of the GST Council in its 25th meeting. • Sugar boiled confectionary refers to boiled sweets which has a dedicated

				8-digit HS Code 1704 90 20. It is distinguishable from jelly confectionary, toffees, caramels, similar sweets, etc. • As per open source, boiled sweet is a sugar candy prepared from one or more sugar-based syrups that is heated to a temperature of 160 °C (320 °F) to make candy. So, it is essentially the manufacturing process along with ingredients that determines whether a commodity is classifiable as a boiled sweet and attract a lower GST rate of 12%. • In view of difficulty in administering the levy on sugar boiled confectionery (at 12%) from other similarly placed commodities (at 18%) it is advisable to have uniform rate of 18% to remove the potential leakages/misuse and avoidable litigation. • Fitment Committee recommended to defer the issue for industry consultation.
4.	Steel scrap		5% (with ITC),or 2% (without ITC),or 5% or 18% (under RCM Exempt when sold by dealers and RCM in last leg when sold to manufacturer, or 5%, or 1% without	(i) Request to reduce GST rate from 18 % has not been accepted by GST Council in its 47th meeting. Therefore, **issue of rate reduction has already been decided. The only issue referred to Fitment committee for deliberation and making suitable recommendations is regarding levy of GST on RCM basis** (ii) Currently, GST rate on scrap [falling under 7204, 7404, 7503, 7802,

			ITC, for traders only	7902, 8549] is 18% on forward charge basis as per section 9(1) of CGST Act, 2017. (iii) So far, the GST Council has not recommended reverse charge mechanism (RCM) on the supply of scrap as per section 9(3) or 9(4) of CGST Act, 2017 <u>Observation by Karnataka & Punjab during 47th GST Council Meeting:</u> (iv) Hon'ble Member from Karnataka suggested to do a detailed study on scrap, where it was used in manufacturing and in which industries. If this could be tracked, then there could be a reverse charge leading to generation of higher revenue. The representative from Punjab requested to defer the issue of RCM and to take it up only after due consultation <u>Industry Consultation by Karnataka:</u> (v) One of the discussed proposal was to notify ferrous scrap for GST-TDS @ 2% under Section 51 of the Central Goods and Services Tax Act. 2017 CGST Act. It was opined that with such tax deduction, the transaction will get in the reporting chain and the scrap dealers will get

					compliant. However, industry rejected this proposal asserting that it would still leave 16% for the scrap dealers to continue engaging into the fraudulent tax practices like claiming irregular input tax credits to the tune of 16 Another discussed proposal was to generate unique batch numbering for each lot of ferrous scrap at the source of scrap (i.e. households for obsolete scrap). It was opined that it would facilitate traceability of scrap given that each lot will have a unique ID. The industry rejected this proposal by asserting that it would involve significant investment in infrastructure processes and monitoring. Also, even after such investment, scrap suppliers could still choose to be non-compliant. (vi) Industry informed that it is struggling with the GST issues related to the category "Obsolete Scrap" that is discarded when steel products (appliances, machinery, buildings, bridges, ships, cans, railway coaches and wagons etc.) have

				served their useful life. It is different from "Home Scrap" and "Industrial Scrap". (vii) Accordingly, the industry requested to consider the following: (viii) Create distinct classifications for obsolete scrap and other kinds of scrap for ease of monitoring and appropriate tax treatment, and (ix) Accept one of the two proposals laid down by the association for obsolete scrap i.e. (x) reverse charge mechanism on sales to manufacturers, or (xi) GST @ 1% without input tax credit. • State of Karnataka observed that the proposal of levy of GST on reverse charge mechanism may not be feasible as the same breaks the chain of input tax credit and also leads to cascading of taxes and also breakage of audit trail. However, to prevent the evasion of tax and to create a conducive business atmosphere, the following measures are recommended: (a) Introduction and implementation of track and trace mechanism in the line of tobacco products as planned Better registration procedures may be implemented for the taxable persons in scrap in light of the amendments done to the registration process

				requiring the physical authentication and presence of the taxpayer before the officer at the time of registration. This should be periodically renewed. (b) E-waybill should be generated for evasion prone commodities only if that commodity is registered to be supplied. Amendments should be made to incorporate this feature and this needs physical authentication by the registering authority. (c) With the introduction of not allowing input tax credit without the invoice being reflected in FORM GSTR-2B and better registration procedure in evasion prone commodities, the menace would come down and the effect of this mechanism needs to studied (d) and a decision on RCM may be taken if there is no alternative but to disturb the status quo, at a later date. This is because RCM is always distortionary. • Punjab has suggested to tax iron and scrap on RCM and exempt supply of scrap in the hands of traders. Under RCM, the manufacturer will have the liability to pay tax and this is administratively efficient to boost tax collection. Further, -way bill should be mandatory for all transactions in scrap irrespective of value. • Fitment Committee decided to create a Committee of officers to study the issue holistically and to

				come up with workable solutions

(d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services – Annexure IV

Annexure-IV

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
1.	To exempt GST on satellite launch services provided by private organizations.	• Satellite launch services by Indian Space Research Organization (ISRO), Antrix Corporation Limited (ACL) or New Space India Limited (NSIL) is exempt from GST. • However, this exemption is not applicable to satellite launch services provided by private organizations. India is emerging as a strong player in the global commercial space market. • In order to allow start-ups to take full advantage of these huge opportunities being created in Indian space sector, it has been requested that the GST exemption on satellite launch services may be extended to private players.	• Satellite launch services supplied by ISRO, ACL and NSIL are exempt from GST. [Sr. No. 19C of notification No. 12/2017-Central Tax (Rate) *refers*]. • The 42nd GST Council took a conscious decision to exempt satellite launch services even though GST charged on such supplies was available to the recipient of these services as ITC. The rationale behind this decision was to reduce the upfront cost for the recipients of such services especially startups. • Fitment Committee recommended that the exemption may be extended to satellite launch services provided by private organizations with a view to provide level playing field.
2.	Rectification in item at Sl. No. 3(ie) of the notification No. 11/2017 CTR dated 28.06.2017, which currently reads as follows: *"(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item*	• Vide notification No. 03/2022-CTR dated 13.07. 2022, items at sl. No. 3(iv), (v) and (vi) of the notification No. 11/2017 CTR dated 28.06.2017 were omitted. • However, the item at sl. No. 3(ie) of the notification continued to have reference to some of the schemes etc. which figured under sl. No. 3(iv), (v) and (vi) of the notification. The anomaly may be rectified.	• On the recommendations of 47th GST Council, vide notification No. 03/2022-CTR dated 13.07. 2022, items at sl. No. 3(iv), (v) and (vi) of the notification No. 11/2017 CTR dated 28.06.2017 have been omitted. • However, the item at sl. No. 3(ie) of the notification continues to have reference to some of the housing schemes etc. which figured under sl. No. 3(iv), (v) and (vi) of the notification in order to take care of the real estate projects which commenced prior to 01.04.2019. • Fitment Committee recommended that the anomaly may be rectified

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
	(b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item."		by inserting suitable explanation to effect that the item at sl. No. 3(ie) of the said notification refers to sub-items of the item (iv),(v) and (vi) of the notification as they existed in notification prior to their omission vide notification No. 03/2022-CTR dated 13.07. 2022.
3.	Omission of clause (h) of explanation to the entry at Sl. No. 24 (i) of the notification No. 11/2017 CTR dated 28.06.2017.	• Exemption entry at sl. No. 53A of the notf. No. 12/2017 CTR dated 28.06.2017 dealing with "services by way of fumigation in a warehouse of agricultural produce was omitted vide notification No. 04/2022-CTR dated 13.07.2022. • However, a parallel entry at clause (h) of explanation to the entry at Sl. No. 24 (i) of the notification No. 11/2017 CTR dated 28.06.2017 remained which may be omitted.	• On the recommendation of 47th GST Council, exemption entry at sl. No. 53A of the notf. No. 12/2017 CTR dated 28.06.2017 which covered "*services by way of fumigation in a warehouse of agricultural produce"* was omitted vide notification No. 04/2022-CTR dated 13.07. 2022. • However, a parallel entry at clause (h) of explanation to the entry at Sl. No. 24 (i) of the notification No. 11/2017 CTR dated 28.06.2017 for the same service has not been omitted. • Fitment Committee recommended that the same may be omitted.
4.	(a) Extend date for filing of Declaration by Goods Transport Agencies (GTAs) to pay GST under forward charge mechanism (FCM) during 2023-24.	• GTAs were not able to file declaration for paying GST under FCM during 2023-2024 by the last date, that is 15th March, 2023 due to various reasons including: o Presumption that the requirement was only for those who are going in for FCM from 2023-24	• GTAs who want to pay GST under FCM during any financial year are required to exercise the option to do so by filing an online declaration on Goods and Services Tax Network (GSTN) portal by 15th March of the preceding financial year. • This requirement was notified on 13.07.2022 based on the recommendations of the 47th GST Council meeting. Accordingly, the

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		○ Submitted the hard copy of Annexure V before 15th March, 2023 but missed the online application ○ Unaware of the requirement and did not submit Annexure V, either online or offline, before the deadline ○ Applied for a new GST registration in March 2023 and received the GST number after 15th March 2023, and thus, were unable to submit Annexure V within the given window ● Therefore, it was requested that the deadline may be extended to 31.05.2023.	deadline for exercising this option for financial year 2023-2024 was 15th March, 2023. • The following two proposals, were placed before GST Implementation Committee (GIC) in view of the urgency involved: (i) to extend last date for exercising the option to pay GST under FCM from 15th March, 2023 to 31st May, 2023 and (ii) to allow GTAs who commence new business or cross registration threshold during any financial year, to exercise the option for the year in which they commence business or cross registration threshold within 45 days from date of applying for GST registration or 1 month from date of obtaining registration whichever is later. • These changes were thereafter notified on 09.05.2023 after GIC approval thereby resolving this issue for the current financial year. • For the future, it is felt that GTAs who have exercised option to pay GST under forward charge in previous financial year(s) should not be required to file declaration every year. • As a trade friendly measure, Fitment Committee recommended that the requirement to exercise option to pay GST under forward charge every year may be done away with and it may be provided in the notification that, GTAs who have exercised option to be under FCM during a particular financial year shall be deemed to have exercised it for the next and future financial years unless they file a

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			declaration that they want to revert to reverse charge mechanism (RCM). • Draft form for this purpose is placed at Annexure A. • Consequent changes may also be made to: o Annexure V to notification No. 11/2017-CTR [as discussed in Annexure B] o Annexure III of notification No. 13/2017-CTR [as discussed in Annexure C]
	(b) A start date may be prescribed for filing of option by GTA to pay tax under FCM.	• GSTN has requested that a start date for filing of option by GTA may be provided for subsequent financial years; otherwise the default date for exercise of option for a financial year shall be 1st April of the preceding financial year. For example, the default start date for FY 2024-2025 would be 1st April, 2023.	• Having start date for exercise of option for a FY as 1st April of the preceding FY is not desirable as this may give rise to false impression to the GTAs that they have exercised option for the current FY. • Fitment Committee recommended that the start date may be prescribed as 1st January of the preceding financial year. • Fitment Committee also recommended that the last date for filing the option may be changed from 15th March to 31st March of preceding Financial Year.
5.	Amendment may be made to notification No. 8/2017-ITR and notification No. 10/2017-ITR to remove redundant provisions pursuant to amendments in Finance Act, 2023.	• Hon'ble Gujarat High Court in Mohit Minerals case has ruled that no tax is leviable on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. • The impugned notification No.8/2017 – Integrated Tax (Rate) and the Entry 10 of the notification No.10/2017 – Integrated Tax (Rate) were declared ultra vires the	• Prior to enactment of Finance Act, 2023, place of supply of service by way of transportation of goods was 'destination of goods'. As a result, transportation service supplied by an Indian Shipping Line (ISL) to a foreign exporter, for transport of goods from foreign port to India against foreign exchange did not qualify to be an export of service and was taxable. However, the same service supplied by a Foreign Shipping Line (FSL) to foreign exporter, both being outside India, was not taxable. • To provide level playing field to ISLs, liability on transportation service

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		Integrated Goods and Services Tax Act, 2017. • Hon'ble Supreme Court subsequently upheld the decision of the Gujarat High Court. • In the wake of the above judgements, appropriate clarifications or amendments may be issued in the said notification.	supplied by FSL to foreign exporter for transport of goods to India, was placed on the Indian importer under RCM. • Hon'ble Supreme Court judgement in Mohit Mineral case passed in 2022 has set aside this liability on the importer. • In order to restore level playing field to ISLs, the place of supply (PoS) of service of transportation of goods has been changed from 'destination of goods' to 'location of recipient' Finance Act 2023. As a result, services supplied by ISLs to foreign exporter against payment in foreign exchange would now meet the definition of export of service and shall be zero rated. This is intended to bring parity between tax treatment of service supplied by FSL and ISLs both for inward and outward freight. • Supply of service can be considered as an export of service only if the recipient of service is located outside India, the place of supply of service is outside India and the payment for such service is received in convertible foreign exchange or in Indian rupees where permitted by RBI. • Fitment Committee recommended that the provisions which were introduced to provide level playing fields to ISLs have lost relevance and need to be amended/deleted as per Annexure D. • Section 162 of Finance Act, 2023 omits Section 13(9) of IGST Act, 2017. However, this section of Finance Act, 2023 shall come into effect from date of notification in official gazette. • The proposed amendments/deletions will also be synchronized with date of notification of Section 162 of Finance

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			Act, 2023.
6.	To clarify that services provided by director in his personal capacity such as providing services by way of renting of immovable property to the company/body corporate which is not in his official capacity as post of director to the said company/ body corporate are not subject to Reverse Charge mechanism under the provision of Section 9(3) of CGST Act vide Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017.	• It has been submitted that services supplied by director of a company or a body corporate to the said company or the body corporate are subject to Reverse Charge mechanism under the provision of Section 9(3) of CGST Act vide Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017. • However, in cases, where director is providing services in his personal capacity such as providing services by way of renting of immovable property to the said company/body corporate and not in his official capacity as post of director in the said company/body corporate, should not be subjected to GST under reverse charge mechanism. These said services should attract GST on forward charge.	• Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017, provides that services supplied by a director of a company or a body corporate to the said company or the body corporate are subject to Reverse Charge Mechanism under the provisions of Section 9(3) of CGST Act. • Issue raised essentially is whether services supplied by a director of a company or body corporate such as renting of immovable property in private or personal capacity is taxable under Reverse Charge Mechanism as per above mentioned entry of ibid notification. • Providing services such as renting of immovable property in private or personal capacity by a director of a company or body corporate are not covered under above mentioned entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017 and hence not taxable under Reverse Charge Mechanism. • The said entry covers only those services supplied by director of a company or a body corporate, which are supplied by the director of the company or the body corporate as or in the capacity of director of that company or body corporate and not services supplied by him in personal capacity. • Accordingly, Fitment Committee recommended to clarify the issue by way of a circular.
7.	To clarify that supply of food and beverages at cinemas is taxable	State of Karnataka raised the issue as follows: • The cinema operators are engaged in the business of	• The request is to clarify that supply of food and beverages at cinemas is taxable as restaurant service attracting 5% GST.

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
	as restaurant service and to levy GST at the rate of 5% on the same.	exhibition of cinematographic films & supply of food & beverages in cinema premises around the country. It is submitted that, in case of railways, airports, etc., the members also provide a ticket to access the premise, but once the access is granted, food and beverage is supplied to the patrons as per the order. • In the above backdrop, it is submitted that, the Cinema like cloud kitchen/take away is also engaged in service in the form of cooking and preparing of food and thus, should get covered under the definition of "restaurant services' liable to GST @ 5%. • Multiplexes are engaged in supply of food and beverage to patrons who come to watch movies in the cinema premises. Such products are processed and cooked inside the cinema premises and served to the patrons to be consumed on the cinema premise or as takeaway. The products cooked by the cinema are specially curated and cooked by the cinema on the premise. • Since the inception of GST, the cinema exhibition industry has treated the supply of food and beverage at the cinema premises as provision of service and levied GST at 18%. Vide notification No. 46/2017-	• As per Explanation at Para 4 (xxxii) to notification No. 11/2017-CTR dated 28.06.2017, *"Restaurant Service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied."* • Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also. • The cinema operator may run these refreshment or eating stalls/ kiosks/ counters or restaurant themselves or they may give it on contract to a third party. The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may avail or not. • Thus the food or beverages served in a cinema hall is taxable as restaurant service as long as: (i) the food or beverages are supplied by way of or as part of a service and (ii) supplied independent of the cinema exhibition service. • Where the sale of cinema ticket and supply of eatables such as popcorn or cold drinks etc. are clubbed and sold together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		CTR dated 14.11.2017 the reduced rate of 5% without ITC has been levied on restaurant service. It was further clarified vide circular No. 164/20/2021-GST dated 06.10.2021 that the intention of the government is to cover any place which is supplying food and beverage as service by way of cooking. • Even in case of fixed eating places at railway platforms, airports or trade exhibitions or food and beverage served in airport/train, wherein an entry ticket is required to access these places, supply of food and beverage at these places is treated as restaurant service and subject to GST @ 5%. For railway platforms, levy of GST @ 5% has already been issued vide notification No. 12/2018-CTR dated 26.07.2018. • In the instant case also, the cinemas also provide a ticket to access the premise, but once the access is granted for viewing the movie, food and beverage is supplied at cinema akin to supplies made at railway platform/airport/trains/airline or exhibitions. • Hence, the cinema industry has requested that supply of food and beverage for human consumption should be construed as 'restaurant service' and thus, liable to GST @ 5% (without	the rate applicable to service of exhibition of cinema, the principal supply. • Fitment Committee has recommended that a clarification may accordingly be issued by way of a circular.

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		availment of input tax credit).	

****

Annexure A

Annexure VI

FORM

Form for exercising option by a Goods Transport Agency intending to revert under reverse charge mechanism to be filed before the commencement of any financial year to be submitted before the jurisdictional GST Authority.

Reference No.-

Date: -

1. I/We_____ (name of Person), authorized representative of M/s……. had exercised option to pay GST on the services of GTA in relation to transportation of goods supplied by us during, the financial year……under forward charge by filing Annexure V on .....;

2. I hereby declare that I want to revert to reverse charge mechanism for Financial Year.....;

3. I understand that this option once exercised shall not be allowed to be changed within a period of one year from the date of exercising the option and will remain valid till the end of the financial year for which it is exercised.

Legal Name: -

GSTIN: -

PAN No.

Signature of Authorized representative:

Name Authorized Signatory :

Full Address of GTA:

(Dated Acknowledgment of jurisdictional GST Authority)

Note: The last date for exercising the above option for any financial year is the 31st March of the preceding financial year.

Annexure B

Annexure V

FORM

Form for exercising the option by a Goods Transport Agency for payment of GST on the services supplied by him under forward charge before the commencement of any financial year to be submitted before the jurisdictional GST Authority.

Reference No.-

Date: -

1. I/We_____ (name of Person), authorized representative of M/s……. have taken registration/ have applied for registration and do hereby undertake to pay GST on the services of GTA in relation to transportation of goods supplied by us during , the financial year……under forward charge in accordance with section 9(1) of the CGST Act, 2017 and to comply with all the provisions of the CGST Act, 2017 as they apply to a person liable for paying the tax in relation to supply of any goods or services or both;

2. I understand that this option once exercised shall not be allowed to be changed within a period of one year from the date of exercising the option and will remain valid till ~~the end of the financial year for which it is exercised~~ time I exercise option to revert under reverse charge mechanism by filing Annexure VI on or before the due date.

Legal Name: -

GSTIN: -

PAN No.

Signature of Authorized representative:

Name Authorized Signatory :

Full Address of GTA:

(Dated Acknowledgment of jurisdictional GST Authority)

Note: The last date for exercising the above option for any financial year is the 31st March of the preceding financial year.

Annexure C

Annexure III

Declaration

I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us ~~during~~ from the Financial Year _____ under forward charge and have not reverted to reverse charge mechanism by filing Annexure VI"

Annexure D

1. Notification No. 08/2017-ITR dated 28.06.2017, Sr. No. 9(ii) providing rate of IGST on supply of services

Existing		Proposed	
Description of service	**Rate**	**Description of service**	**Rate**
Transport of goods in a vessel *including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.*	5%	Transport of goods in a vessel	5%

2. Notification No. 09/2017-ITR dated 28.06.2017, Proviso (ii) to Sr. No. 10 exempting certain services from IGST

Existing		Proposed	
Description of services exempt from GST	**Rate**	**Description of services exempt from GST**	**Rate**
Services received from a provider of service located in a non-taxable territory by – (a).... (b).... (c) a person located in a non-taxable territory: Provided that the exemption shall not apply to – (i) .... (ii) *services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry*	Nil	Services received from a provider of service located in a non-taxable territory by – (a).... (b).... (c) a person located in a non-taxable territory: Provided that the exemption shall not apply to – (i) .... (ii) May be omitted	Nil

3. Notification No. 10/2017-ITR dated 28.06.2017, Sr. No. 10 notifying interstate supplies under RCM

Existing			Proposed
Category of supply of services	**Supplier of service**	**Recipient of service**	May be omitted
Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a	*A person located in non-taxable territory*	*Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.*	

place outside India up to the customs station of clearance in India				

******

(e) Issues where no change has been proposed by the Fitment Committee in relation to services – Annexure V

Annexure-V

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
1.	To exempt: (i) IGST on purchase of aircraft and (ii) IGST on aircraft lease payment	• Purchase of aircraft attracts GST at the rate of 5%. The credit of GST so paid is not available to the airline for discharging output tax on passenger transport services through economy class. Thus, substantial amount of GST paid become a cost to airlines. On the other hand, when aircraft is procured under leasing arrangement, GST at 5% paid on lease rentals is available to airline for discharging output tax liability on passenger transport services through economy class. • Therefore, leasing an aircraft has significant advantage in terms of both cash flow and impact on profit and loss as opposed to upfront purchase of an aircraft due to different treatment of the said transactions under GST legislation. Airlines are forced to lease aircrafts as opposed to buying.	• The request to abolish GST of 5% on import/purchase of aircrafts and lease payments on leased aircrafts and engines was placed before the 45th GST Council. The Council did not accede to this request. • The issue was again deliberated by the Fitment Committee. As regards, the request to exempt IGST on purchase/import of aircraft, it is stated that such a step will be detrimental to the 'Make in India' initiative of the government and the nascent aircraft manufacturing industry in India. As per news reports, *"India is emerging as one of the key aviation markets in the world and given the growing middle class and emerging economy, the demand will continue to grow. The government realizes that there is a real potential for aircraft manufacturing in India and it makes sense both for the manufacturer and for the airline."* The Hon'ble Prime Minister has also laid foundation stone of the first private sector C-295 aircraft manufacturing facility in Vadodara, Gujarat. • GST on supply of goods on lease has to be the same as GST on supply of goods by way of sale to avoid arbitrage. • Fitment Committee recommended maintaining status quo.
2.	To exempt GST on the services by the way of granting affiliation to schools by Central Board of Secondary	• It has been submitted by CBSE that it is an autonomous body under the Ministry of Education, GOI and owns its constitution vide the Resolution No. 209	• Request for granting exemption on services by the way of affiliation services provided by universities/board or other educational organizations to educational institution was placed before the 47th GST

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
	Education (CBSE) for conduct of secondary stage examinations in schools.	published vide No. F55.21/61.SE 2(B) dated 27.02.1962 w.e.f. 01.07.1962 (hereinafter referred to as '1962 resolution') with the prime objective of regulating and maintaining the standard of Secondary Education in India by way of conducting examinations at Secondary stage of education. • For the purpose of its Board Examination, CBSE is empowered for granting affiliation to such schools which wishes to prepare candidates for the examinations conducted by CBSE and requests to CBSE for its recognition. For such affiliation CBSE charges an affiliation fee. • Thus, the affiliation provided by CBSE is purely in relation to its examination services which is not a separate service but a part of unified service which is a very unique feature and cannot be compared with the functions of National Board of Examination (NBE) [whose example is cited in the circular no. 151/07/2021 - GST dt 17.06.2021] on the basis of which GST Department is levying GST on the affiliation fees. • Hence, the exemption available to the services in relation to the conduct of examination vide Sr. No. 66(b)(iv) of Notification No. 12/2017-C.T. (Rate) dated	Council. The Council did not accept the request. • Earlier, based on the recommendations of the 43rd GST Council, it was clarified vide circular dated 17.06.2021 that such services attract GST at the rate of 18%. • Fitment Committee recommended to maintain status quo.

<table>
<tr><th>Sr. No.</th><th>Proposal</th><th>Details of Request</th><th>Discussions in Fitment Committee and its recommendations</th></tr>
<tr><td></td><td></td><td>28.06.2017 is inclusive of services by way of granting of affiliation.</td><td></td></tr>
<tr><td>3.</td><td>To exempt GST on digital news subscription.</td><td>• GST on digital news products has made it expensive for readers to access credible news.
• This has direct impact on end users and therefore digital traffic for top publishers have fallen. It is making the task of credible and quality journalism extremely difficult as the news publishers themselves are facing an existential crisis on their revenues and margins.
• Therefore it has been requested to remove GST on Digital News subscription in public interest.</td><td>• Services by way of online/digital news subscription comes under the heading 9984. Telecommunications, broadcasting and information supply services (Group - Online content services) which otherwise attract GST @ 18%.
• Supply of news in digital form is essentially different from the printed new paper in its constitution, distribution and transmission.
• Subscription charges for online news vis-à-vis print media have been examined.
<table>
<tr><th>Print paper</th><th>E paper (Approx.)</th></tr>
<tr><td>The Hindu- 3600 /- yearly (avg.)</td><td>The Hindu- 2000/- yearly</td></tr>
<tr><td>Times of India- 1260/-yearly</td><td>Times of India- 470/- yearly</td></tr>
<tr><td>Mint- 3600/ yearly</td><td>Mint- 2000/yearly</td></tr>
</table>
• It is seen that subscription of e-papers is cheaper than the subscription of print newspaper.
• Further, e-papers are offered at discounted price by various platforms from time to time, thus bringing the price even much less.
• Even after being taxed at 18%, online subscription is available at considerably lower rate. Therefore, the argument of trade that the rate @18% will be hindering the access of the consumers to the online news has no merits. In fact, lowering of GST on e-paper will adversely affect the printed newspaper industry.
• Further, in case of printed newspaper, major input i.e. newsprint attracts GST @5%, however, in case of e-</td></tr>
</table>

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			papers, major inputs are taxed at higher rates of GST (18/28% e.g. Telecommunications, broadcasting and information supply services, Electronic goods (monitors, storage device etc.). As a result, exemption would result in blockage of ITC and increase of cost. This will also lead to inverted duty structure. • Fitment Committee recommended to maintain status quo.

****

(f) Issues deferred by the Fitment Committee for further examination in relation to services – Annexure VI

Annexure-VI

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
1.	To clarify whether service by way of hostel accommodation, service apartments/ hotels booked for longer period is a service of renting of residential dwelling for use as residence and exempted as per entry no. 12 of the notification No. 12/2017-CT (Rate) dated 28/06/2017.	• The services under heading 9963 by a hotel, inn, guest house, club or campsite by whatever name called for residential or lodging purpose, having declared tariff of a unit below one thousand rupees per day or equivalent were exempt till 17.07.2022 vide entry no. 14 of the notf. No. 12/2017-CT(R) dated 28.06.2017. • Circular No. 354/17/2018-TRU dated 12.02.2018 at its point no. 1 has considered the hostel accommodation at par with the hotel accommodation. Accordingly, multiple AARs from different states like Maharashtra, Rajasthan and Chhattisgarh have exempted hostel accommodation of students having charges below 1000/-rupees a day under the entry no. 14 of the notification no. 12/2017-CT(Rate). • Vide the latest amendment notification No. 04/2022-CT(Rate) dated 13.07.2022, the exemption to hotel accommodation having per day charges below Rs. 1000/- has been withdrawn w.e.f. 18/07/2022 and the said transaction is now made taxable at 12% by the notification No. 03/2022-CT (Rate) dated 13.07.2022.	• The judgment of the Hon'ble Karnataka High Court dated 03.02.2022 in WP No. 14891 of 2020 titled Taghar Vasudeva Ambrish is subjudice as the department has filed civil appeal against the same before Hon'ble Supreme Court of India vide SLP 2317/2023. • Since the matter is sub-judice, Fitment Committee recommended that the same may be deferred.

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		Thus, the service of hostel accommodations, having charges below Rs. 1000/- a day which were held as exempt earlier by different AARs are now taxable services w.e.f 18.07.2022. • However, in the case of Taghar Vasudeva Ambrish, in WP No. 14891 of 2020, the Hon'ble Karnataka High Court at para 12 of the judgment, while reproducing the meaning of 'residential dwelling' has observed that *"in normal trade parlance residential dwelling means any residential accommodation and is different from hotel, motel, inn, guest house, etc. which is meant for temporary stay."* • In para 13, the court has noted that *"in hostels, the duration of stay is more as compared to hotel."* And later in para 14, it came to conclusion that *"it cannot be held that the residential dwelling does not include hostel which is used for residential purposes by students or working women."* Thus, the court has held the service of hostel accommodation as the services by renting of residential dwelling for use as residence. • Entry no. 12 of notification No. 12/2017-CT (Rate) dated 28.06.2017 exempts the services by way of renting of	

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		residential dwelling for use as residence. Therefore, if the hostel accommodation is considered as the hotel accommodation, in line with the circular dated 12.02.2018 issued by CBIC, it is taxable service and if it is considered as residential dwelling, as held by the Hon'ble Karnataka High Court, it is an exempt service. • If the ratio of 'temporary stay' applied by Hon'ble Karnataka High Court is considered then it may initiate some more legal disputes in case of taxation on Service apartments, which were usually booked by the companies for a considerably longer period. The issue regarding the taxability in case of hostel accommodation, service apartments or hotels booked for longer period may be clarified.	
2.	To exempt services provided by District Mineral Foundations from GST.	• A District Mineral Foundation (DMF) Trust is established by the State Government under section 9B of the MMDR Act, 1957, with an objective to work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. • They provide services related to drinking water	• 45th GST Council (*SI.No.7 of Annexure-VI, Agenda No. 14*) deferred the matter stating that the issue was not clear. The council also directed to obtain details about the nature of activities undertaken by DMF from Odisha. • Odisha government was requested to inform the nature of activities undertaken and services supplied by DMF. • The issue was deliberated in the Fitment Committee meetings and it was decided to defer the matter till reply is received from State of Odisha.

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		supply, environment protection, health care facilities etc.	
3.	To clarify whether reimbursement of electricity charges received by the Real estate companies, malls, airport operators etc. from their lessees/occupants is exempt from GST.	• In terms of Sl. No. 13 of notification No. 11/2017 Central Tax (Rate) dated 28/06/2017 and pari materia state notifications issued in this regard (hereinafter referred to as the 'Rate Notification'), Electricity, gas, water and other distribution (under Heading 9969) is taxable @ 18%. • In terms of Sl. No, 25 of notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 and *pari materia* state notifications issued in this regard (hereinafter referred to as the 'Exemption Notification') "Transmission or distribution of electricity by an electricity transmission or distribution utility" (under Heading 9969) is exempt from levy of GST. • Real estate companies supply electricity to their short term and long-term lessees. These companies take High Tension line from Electricity Distribution Companies (DISCOMs) and convert the same into Low Tension line in transformers and through panels the same is being distributed to the sub lessees/occupants for their consumption. • DISCOMs bill directly to the real estate companies, who in turn bill to the end	• The issue was discussed in the Fitment Committee meetings held on 25.04.2023 and 09.06.2023. • Members have been requested to share practices being followed in their states with regard to levy of GST on such further supply of electricity by builders/developers etc., the regulatory framework w.r.t such further supply of electricity, and copies of Show Cause Notices/Adjudication Orders issued, if any, demanding GST on such further supply of electricity, along with their views. • Fitment Committee recommended to defer the issue till receipt of the information.

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		consumers on the basis of actual units consumed by the property occupants within their offices/units as per the reading recorded in the sub meters installed at their premises, at the same rate at which DISCOMs billed them or at a higher rate citing several reasons such as, "Transmission/Distribution Loss". • Doubts are being raised on the applicability of GST on the aforesaid further supply of electricity by the real estate companies to their lessee or occupants on whose inward supply no GST was leviable.	
4.	To clarify whether ITC of other business verticals can be used to discharge GST on outward liability in respect of restaurant service given the restriction of input tax credit as specified in notification No. 11/2017-CT (Rate) dated 28.06.2017, as amended, against Entry no. 7 [& in 8, 9, 10, 23, 25, 31A].	• During the period from 01.07.2017 to 14.11.2017, supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink, where such supply or service was for cash, deferred payment or other valuable consideration provided by a restaurant attracted tax @ 12%/18% with ITC. • GST Council in its 23rd Meeting dated 10.11.2017 held that, *"All stand-alone restaurants irrespective of being air conditioned or otherwise, shall attract tax at the rate of 5% without input tax credit. Food parcels (or takeaways) from restaurants shall also attract tax*	• By way of notification No. 46/2017-CT (Rate) dated 14.11.2017 w.e.f. 15.11.2017, the supply of services by a restaurant which is not located in the premises of hotels, inns, guest houses or other similar places having declared tariff of any unit of accommodation of Rs. 7,500/- and above per unit per day or equivalent has been made taxable @5% with the condition that credit of input tax charged on goods and services used in supplying the services has not been taken. Explanation No. (iv) as appended to notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 which reads as follows: *"(iv) Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,* *(a)Credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and*

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		at the rate of 5% without input tax credit." [Para 66(vi), Page 51, Signed Minutes, 23rd GSTCM] • Accordingly, it appears that, while approving the rate of tax of **"5% without input tax credit"** for restaurants, the intent of the Council was to disallow payment of output tax liability with any ITC whatsoever, whether in respect of inward supplies used in supplying the restaurant services or other business verticals under the same GSTIN. • Accordingly, changes were made w.e.f. 15.11.2017 vide Notification no. 46/2017-CT (Rate) dated 14.11.2017. 'Restaurant Service' was later defined w.e.f. 01.10.2019 vide Notification No. 20/2019-CT (Rate) dated 30.09.2019. An Explanation was also inserted in the notification specifying that the said rate of 5% is a mandatory rate. • Instances have been brought to notice in this regard where the output liabilities in respect of restaurant service are being discharged by utilizing ITC availed in respect of other business verticals under the same GSTN. Restriction on availing of ITC as imposed by the aforesaid notifications is applicable only in respect of inward supplies used in	*(b)Credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder*" • The matter was deliberated by members of the Fitment Committee and it was decided to obtain data from GSTN regarding how much tax is being paid by suppliers of restaurant service in cash and credit for further examination of the issue. • Therefore, Fitment Committee recommended to defer the matter.

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		supplying the restaurant services. Utilization of input tax credit in respect of inward supplies used in other business verticals having same GSTIN has not been restricted for discharging outward liability for restaurant service. • In Circular No. 167 / 23 /2021 – GST dated 17.12.2021 issued by the CBIC in the context of services supplied by restaurants through e-commerce operators, clarifies 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).”* • Any such argument that there is no restriction to utilize ITC in respect of other business verticals may actually jeopardize the entire taxation scheme of services where a lower rate of 5% has been specified with the condition that, credit of input tax credit used in supplying the service has not been taken [e.g. Passenger Transportation Service, Goods Transport Services etc.].	
5.	To clarify that job work activity towards processing of “Barley” into “Malted Barley” is covered under the	● Barley malt manufacturing process comprises of (a) cleaning of raw barley ;(b) steeping of cleaned barley; (c) germination and (d) kilning.	• Issue at hand is whether services by way of jobwork for conversion of barley into malt attracts GST at 5% prescribed for "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
	scope of entry no. 26(1)(f) vide notification no. 11/2017-CT(R) dated 28.06.2017 and thus attracts GST @ 5%. In the event it is held that GST @18% is leviable, to regularize for the past on as is basis as they are not in a position to collect differential duty from their customers and will lead to closure of the units	● Job work practice in the malt manufacturing industry is to receive raw material barley from principal and manufacture into malt, thus providing job work services to convert barley into malt. ● Malt is used for various purposes. Apart from being used as raw material by brewing and distilling industry, malt is utilized in production of chocolate, breakfast cereal, malted drinks like Horlicks, Boost, Milo and cocoa-malt drinks like Bournvita. ● They are entitled to 5% GST rate as applicable to services by way of job work in relation to all food and food products falling under Chapters 1 to 22.	tariff" or at rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption. • The process of malting barley involves three main steps. The first is soaking the barley - also known as steeping - to awaken the dormant grain. Next, the grain is allowed to germinate and sprout. Finally, heating or kilning the barley produces its final color and flavor. • In the Fitment Committee meeting held on 29.05.2023 , West Bengal raised some concerns in relation to the instant issue and requested for time to present its views after due consultation. • Fitment Committee recommended to defer the issue.
6.	To apply uniform GST rate of 5% on Business Correspondent services provided in both rural/urban areas.	• Presently, 18% GST is applicable on the entire chain of banking services irrespective of the fact that services are being offered by the banking company or their banking correspondent (BC). With regard to the GST applicable on the service provided by Banking Correspondents, DoR vide its Notification/ Circulars has inter-alia notified the following: • Notification No. 12/2017 dated 28.6.2017 and Circular No. 86/5/2019-GST dated 1.1.2018 reads as follows: *"(i) Exemption of GST on services provided by business*	• Services supplied by Business Correspondent/ Business Facilitator (BC/BF) attract 18% GST as per entry 15(vii) of notification No. 11/2017 CTR dated 28.06.2017. • Further, Sl. No. 39 of notification No. 12/2017- CTR dated 28.06.2017 provides a specific exemption for services provided by BC/BF to banking companies in respect of rural area branches. The said entry reads as below: *Services by the following persons in respective capacities –* *(a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;* *(b) any person as an intermediary to a business facilitator or a business*

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		facilitator or a BC to a banking company with respect to the account in its rural areal branch. The procedure for classification of branch of a bank as located in rural area and the services which can be provided by BC is governed by RBI guidelines. *(ii) Notification No. 28/2018-Central Tax (Rate) dated 31.12.2018: Services provided by banking company to Basic saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) are exempted from GST."* • Under the present notification, there are difficulties in availing the benefit of GST exemption as Indian Financial System Code (IFSC) does not distinguish rural accounts. As a result, the waiver goes unutilized as banks and BCs/CSPs pay up on all remittances to avoid any compliance wrangle. • In recent years, financial inclusion and Digital Banking Service have increased rapidly in the country specially in the rural areas. Banking Correspondents have proved to be tried and tested model and contributed immensely in door step delivery of various banking services including DBT transfer. • In view of the crucial role being played by BCs. GST	*correspondent with respect to services mentioned in entry (a); or* *(c) business facilitator or a business correspondent to an insurance company in a rural area.* • The matter was deliberated in the Fitment Committee. During the meeting, it was felt that to further examine the issue, difficulties faced by banks in availing benefit of GST exemptions with respect to business correspondents/business facilitators in rural area needs to be ascertained more comprehensively. Further, some more data is required from Department of Financial Services regarding services provided by BC/BF in urban areas. Thus, this issue was deferred accordingly.

Sr. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		council may consider to apply a uniform 5% GST rate to all banking services offered at BC Agent outlets, irrespective of whether they pertain to accounts from rural/urban areas or PMJDY as the BC Agent services are majorly used by the poorer strata of the society.	

****

Agenda Item 5: The Second Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming

The GST Council, in its 42nd Meeting, held on 5th and 12th October 2020, decided that a Group of Ministers (GoM) may be constituted to look into the issues related to taxation on casinos, horse racing and online gaming.

2. Accordingly, a Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming was constituted vide OM dated 24.05.2021. In the 45th meeting of the GST Council, held on the 17th September, 2021, the Council was of the view that the said GoM may examine all issues, including rates on online gaming, horse racing and casinos. On 10th February 2022, GoM has been reconstituted with Shri. Conrad Sangma, Hon'ble Chief Minister of Meghalaya as the Convener of GoM with the same Terms of Reference. The GoM comprises of Ministers from Maharashtra, West Bengal, Gujarat, Goa, Tamil Nadu, Uttar Pradesh and Telangana.

3. The GoM submitted its first report in June, 2022 and it was placed before the GST Council in its 47th meeting held on 28th and 29th June, 2022. In the first report, the GoM had recommended as below:

- GST on the activities, namely, casinos, race courses, online gaming and lottery should be uniform, i.e., @ 28% and on the full value of the consideration paid [contest entry fee/ bets pooled/ coins purchased etc.].
- No distinction should be made for the purpose of levy of GST, merely on the ground that an activity is a game of skill or of chance or both.
- In case of casinos, once GST is levied on purchase of chips/coins (on face value), no further GST should apply on the value of bets placed in each round of betting including those played with winnings of previous rounds.
- GST @ 28 % be levied 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.

4. In the 47th GST Council meeting, Hon'ble Minister from Goa raised certain reservations on the report of the GoM. On the suggestion of few other states to revisit the report on the whole, it was decided by the GST Council that the GoM may relook into all the issues in the light of submissions placed before it.

5. Following the decision of the GST Council, the GoM conducted three detailed meetings on 12.07.2022, 05.09.2022 and 22.11.2022. GoM members also conducted field visits to

Bangalore Turf Club and casinos at Goa on 23rd and 24th July, 2022 and met with the trade and associations during the field visits.

6. The deliberations of GoM post submission of its report in the 47th GST Council meeting mainly revolved around two questions, whether the activities of race course and online gaming amount to betting and gambling or not in the light of various High Court and Supreme Court judgments and how should the supplies of casinos, race courses and online gaming be valued; on the full-face value of bets placed or on GGR in case of casinos, totalisator fee in race courses and platform fee/GGR in the case of online gaming. However, no consensus could be reached on the above issues. The views of members of GoM on these issues in brief were as below:

- As regards rate of tax on the activities in question, namely, casinos, race courses and online gaming, there was general agreement that they may be taxed at 28%. However, Goa expressed the view that online gaming may be taxed at 18%.

- As regards value, –

    - West Bengal and Uttar Pradesh expressed the view that all the three activities may be taxed on the full face value of the consideration paid.
    - Maharashtra also expressed the view that these activities are fully taxable. There should also be no differentiation in taxation on the basis of whether the activities are games of skill or chance and the valuation rules should reflect the same. However, suitable abatement may be provided for the purposes of determination of taxable value of supply of actionable claim.
    - Telangana stated that if an activity constitutes betting and gambling, it should be taxed on the full face value as recommended by the GoM in its first report. Where the activities do not constitute betting and gambling, it may be taxed according to the existing provisions.
    - Tamil Nadu also stated that if an activity constitutes betting and gambling, it should be taxed on the full face value as recommended by the GoM in its first report. If horse-racing and online gaming are games of skill and not actionable claims of betting and gambling, for taxing them on Gross Gaming Revenue (GGR), the mechanism of 'escrow account' and 'operator account' to distinguish between contribution to prize money and platform fees/service charge should be adopted.
    - Goa stated that casinos may be taxed on Gross Gaming Revenue [GGR/ margin] and online gaming may be taxed on platform fees.
    - Gujarat stated that online gaming may be taxed on platform fees.
    - Meghalaya expressed the view that casinos may be taxed on GGR. As regards online gaming and horse racing, the sum of money retained by the Online Gaming Operator or the Racing Club is not part of the actionable claim, hence can be taxed at the rate recommended by the GST Council as supply of services. The amount apart from the

retained money as mentioned above is the amount of actionable claim and can be taxed only if it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e., actionable claims can be taxed under GST only if they pertain to lottery, betting, and gambling.

7. The GoM has recommended that since no consensus could be reached on whether the activities of online gaming, horse racing and casinos should be taxed at 28% on the full-face value of bets placed or on the GGR, the GST Council may decide.

8. The Second Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming is annexed separately as a booklet for consideration of the Council.

Agenda item 6: Recommendations of the 18th and 19th meetings of the IT Grievance Redressal Committee for approval/decision of the GST Council:

(a) Recommendations of the 18th meeting of the IT Grievance Redressal Committee:

The 18th meeting of the IT Grievance Redressal Committee (ITGRC) was held on 08th February, 2023 at 02.30 PM in online mode 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 18th ITGRC meeting covered the following issues:

1. Technical Issues requiring data fixes through back-end utilities
2. Any other agenda with the permission of the chair

2. Recommendations of ITGRC on Data Fix issues:

As per the SOP approved in the 45th GST Council meeting for Technical issues requiring data fix of the processed incorrect data through backend utilities, GSTN presented fifteen (15) issues which required data fixes in the 18th meeting of the ITGRC.

2.1 ITGRC took note of the data fixes in 9 issues impacting 592 cases which were of Category-1 as per the SOP (*Technical issues with no financial implication where correct data is known*) on the basis of technical analysis done by the GSTN.

2.2 ITGRC also took note of the data fixes carried out by GSTN in 2 issues (Reversal of late fee in forms GSTR-5 & 6) of Category-2 as per the SOP (*Technical issues where there are financial implications and the correct data is known*) wherein an amount of Rs. 33,700/- has been refunded. The third issue was for waiver of interest for delayed submission of returns due to technical glitches faced by 8 taxpayers in the State of West Bengal. Based on the technical analysis by the GSTN, ITGRC took note of the data fixes by the GSTN and decided to recommend the case for waiver of interest to the GST Council in 5 cases. The amount involved in the 5 cases is Rs. 7,60,77,971/-.

2.3.1 Of the 3 Court cases, one pertained to changing the effective date of cancellation of registration as directed by the Hon'ble HC of Delhi. Data fix in this case has been approved by ITGRC.

2.3.2 The second court case pertained to a taxpayer who did not receive log in credentials and therefore could not complete subsequent compliance requirements including return filing. ITGRC approved the migration of registration along with recommendations to GST Council for waiver of late fee and interest.

2.3.3 The third case pertained to requests received from various States to enable Appellate authority to restore APL 01 where Appeal orders have been remanded back by High Courts. GSTN informed that the remand back functionality is still under development, therefore, the disposed appeal order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted". ITGRC agreed with proposal.

The GST Council may approve the recommendations of the ITGRC and the data fixes carried out by GSTN as mentioned in Para 2 above and the attached Minutes of the 18th meeting of the ITGRC.

Minutes of the 18th Meeting of the IT Grievance Redressal Committee (ITGRC) held on 08.02.2023

The 18th meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 08th February, 2023 at 02.30 PM. The list of officers who attended the meeting is attached as **Annexure-1**. The agenda and annexure to agenda circulated for the meeting is at **Annexure-2.**

2. Joint Secretary, GST Council Secretariat, welcomed all the members and informed that in the 15th ITGRC meeting, a SOP on the mechanism to fix various technical glitches by the GSTN was devised and approved by the GST Council in its 45th meeting. She also informed that data fixes having global financial implications where correct data was not known needed prior approval of the ITGRC whereas data fixes which had local implications would be fixed by GSTN and after data fixes were carried out, the same would be placed before the ITGRC. Data fixes for technical issues having no financial implications were also carried out after taking internal approval within GSTN and were being placed before the ITGRC for perusal. She gave a brief introduction that the agenda shared by GSTN related to data fixes includes nine (09) cases having technical issues with no financial implication where correct data was known with certainty and three (03) cases having technical issues having local implications and the correct data was also known. In addition to the two categories above, GSTN had also shared three (03) court cases for consideration of the ITGRC. Thereafter Joint Secretary, GST Council Secretariat informed that Shri Dheeraj Rastogi, EVP, GSTN and Shri Nirmal Kumar, EVP, GSTN would be covering the agenda in detail. She then invited Shri Shashank Priya, Member, GST, CBIC to give his opening remarks.

3. Shri Shashank Priya, Chairman, ITGRC, thanked everyone for joining in the meeting and expressed his pleasure at working closely with all the members of ITGRC of the Central as well State Governments. He invited EVP, GSTN to proceed with the agenda.

4. Sh. Dheeraj Rastogi, Executive Vice President, GSTN stated that as informed by JS, GSTCS, GSTN has brought twelve issues of technical glitches before ITGRC for which GSTN had to carry out data fixes.

5. Chairman, ITGRC agreed to the suggestion to first discuss those cases which required more analysis.

6. Sh. Dheeraj Rastogi, EVP, GSTN then proceeded with the presentation (**Annexure-3**) andpresented three court cases.

6(a) Court Cases:

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
1	Rectification of effective date of cancellation M/s Outpace Marketing (GSTIN 07AAFFO8689N1Z9) had applied for cancellation of registration on 23.3.2021 and erroneously entered	1	Registration. Form GST REG-19	Through letter recd. from Additional Commissioner, CGST, East Delhi, it was informed that jurisdictional Officer has approved the rectification of effective date of	Work in Progress.

	the effective date of cancellation as 20.3.2020 instead of 20.3.2021 as informed by the officer.			cancellation from 20.3.20 to 20.3.21 to be done. This has been approved by Commissioner. The Commissioner has requested GSTN to rectify the effective date of Cancellation as per Hon`ble High Court of Delhi direction.	

Discussion and decision:

This particular case was regarding rectification of effective date of cancellation. The GSTN informed that they had created an SDM program, the completion of which would take some time from the backend.

Decision: ITGRC approved the data fix done by the GSTN.

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
2	M/s Swapnadip Enterprises had not received the Login credentials of the GST Portal for Provisional ID19AEAPG7710H1ZP.On account of non-receipt of Login credentials, the subsequent compliances including return filing were not completed by the taxpayer. The Hon'ble Calcutta High Court directed GSTN to examine the issue. GSTN vide letter dated 24.11.2021 has stated that they are not the appropriate authority to pass any order as it is an implementing agency and has no adjudicating powers and the matter was referred to proper officer to examine the issue. Basis that Nodal Officer for Kolkata CGST Zone has submitted the matter before ITGRC to consider taxpayer's request for activating	1	Registration	Points for ITGRC consideration: On account of non-receipt of Login credentials, the subsequent compliances including return filing were not completed by the taxpayer The recommendation received from Nodal Officer, Kolkata CGST Zone, is to activate the GSTIN 19AEAPG7710H1ZP w.e.f. 1st July, 2017 and provide login credentials for the said GSTIN to the petitioner. However, technically, this is not possible on the	ITGRC to deliberate on this issue

	the GSTIN and providing login credentials.			system as he has not completed his enrolment form at the time of migration as per our database. Therefore, system does not allow to generate registration number directly in this case. Provisional GSTIN cannot be activated from backend as enrollment application form is not live anymore and also data is not available for such taxpayers in our master tables and cache which was supposed to be provided by such taxpayers as a part of migration. Therefore, such taxpayer can't be activated with same number. Hence, as per the parallel approved process, taxpayer can be advised to take new registration on the same PAN and post approval and allocation of new GSTIN, it can be swapped with old GSTIN. Hence, the taxpayer needs to apply for new GST Registration under Form GST REG-01 on the portal and accordingly registration will be granted w.e.f. 01.07.2017. As recommended by Nodal Officer, Kolkata CGST Zone to enable furnishing of GSTR-1 and GSTR-3B by the Taxpayer w.e.f. 1st July, 2017, inputs are required on the following:	

				a) If he files all the pending returns, whether reversal of late fee and waiver of interest shall be permitted? b) Whether he can avail input tax credit? c) Whether he can file TRAN-1, if required?	

Discussion and decision:

This case was of M/s Swapnadip Enterprises where the assessee could not migrate to GSTN as he did not receive the login credentials. Then he approached the Hon'ble High Court which ordered GSTN to examine his case. GSTN clarified through a speaking order that only the jurisdictional authority might pass order as to the admissibility and GSTN had no authority as it was only a data keeping authority. The nodal officer examined the case and recommended that the case should be allowed to migrate.

Sh. Dheeraj Rastogi informed that on migration of the registration, the taxpayer would need to be given facility to file returns for the past period and the issue of filing TRAN-I might also arise. The financial implications of the case might extend to the availment of input tax credit and filing of Tran-I apart from the reversal of late fee and waiver of interest for late filing of returns.

Representative from Tamil Nadu enquired whether the action required the waiver of interest and late fee.

EVP, GSTN informed that the waiver of late fee and interest would be required as the return filing would be of the past periods.

Responding to the enquiry from Chairman, EVP GSTN explained that mandate of ITGRC was to examine whether there existed a technical error and give suitable recommendations to the Council. That in the past also, the ITGRC had recommended for waiver of late fee and interest consequent upon analysis of the GSTN that a technical glitch/error had occurred in the system.

The Chairman stated that since there was a communication gap and that since in the past too ITGRC had allowed waiver of interest and late fee in migration cases therefore, in this case also, ITGRC may approve migration of registration along with waiver of late fee and interest. However, filing of TRAN-I might not be considered at this stage.

Pr CC, Delhi Zone enquired whether the ITGRC had the power to waive the interest.

EVP, GSTN clarified that since the taxpayer could not even login and since there was a communication gap, waiver of both late fee and interest should be allowed. He also clarified that in the past also such waiver of late fee and interest were considered and recommended to the GST Council which were approved by the Council. Subsequently, GST Policy Wing had notified waiver of late fee and interest in relation to specific GSTINs.

Chairman, ITGRC stated that ITGRC could recommend the waiver of interest and late fee and appreciated Pr CC, Delhi Zone for bringing out the issue related to authority of ITGRC regarding waiver of interest and directed that GSTN might calculate the quantum of late fee and the jurisdictional officer might calculate the interest after enquiry from the assessee.

Representative from Gujarat suggested that there might be such other cases also and therefore proposed that the ITGRC could seek a general power for ITGRC from GST Council to waive such late fee and interest.

Chairman, ITGRC stated that since more than five years have elapsed since implementation of GST, such cases might be few and far between and therefore such general power need not be sought and ITGRC could limit itself to examination of particular cases brought before it.

Decision: The ITGRC agreed with the proposal and approved the migration of the registration along with recommendations to GSTC for waiver of late fee and interest.

GSTN Comments: GSTN has requested JC, PCCO, Kolkata Zone to calculate the interest and late fee and it will be shared with GST Council Secretariat.

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
3	Reverting APL 01 to submitted status as APL 04/02 has been remanded back by Hon`ble High Courts	48	Appeal APL 01	Requests have been received from various states to enable Appellate authority to restore APL 01 where either Appeal orders APL 04 or APL 02 have been remanded back by High Courts of different States. Functionality is not available for remand back to Appellate authority. The remand back functionality is still under development, therefore, the disposed appeal order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted".	Data fix provided and the Appeal application ARNs were restored to "Appeal Submission" stage.

Discussion and decision:

EVP, GSTN then presented the third court case which involved restoring of submitted status to APL 04/02 Appeal Orders which have been remanded back by the High Court in 48 cases.

He further clarified that functionality for remand back to Appellate authorities was under development and might take about 2-3 months to be functional.

Chairman, ITGRC stated that the proposal could be accepted and the appeal order could be reset to Appeal Submitted till development of the functionality.

Decision: ITGRC agreed with proposal.

6(b). Thereafter, EVP, GSTN explained three cases where there were technical issues affecting locally with financial implications and where the correct data was known.

The details of the cases are mentioned as follows:

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
1	Reversal of late fee in GSTR-6 form. Input Service Distributor (ISD) was unable to file GSTR-6 form on the GST portal due to error "Error! System Failure" displayed on the portal for the tax period August 2022.	1	GSTR-6	ISD was unable to file return in form GSTR6 by due date, for the tax period August 2022, due to the error "Error! System Failure" displayed on the portal. Due to delayed filing of return the ISD had paid late fee. It had happened due to breakage in internal communication of the APIs on the GST portal. Total late fee recredited to the ISD = Rs. 850 /- (CGST = Rs. 425 /- and SGST = Rs. 425 /-)	Issue is fixed

Discussion and Decision:

EVP, GSTN sharing the details as mentioned above informed that this was a rare scenario and as it was a technical issue, GSTN had fixed the data through data fixes and re-credited the late fee but not the interest.

Chairman ITGRC enquired EVP whether GSTN had done such data fixes cases earlier also.

EVP, GSTN replied in affirmative and informed that in certain cases in the past also GSTN had re-credited the late fee, however, interest was not re-credited.

Decision: ITGRC took note of the data fixes done by the GSTN.

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
2	Reversal of late fee in GSTR-5 form. Non Resident Taxable Person were getting error "double amount of the actual amount while creating challan through liability offset window" while filing GSTR-5 form.	5	GSTR-5	There was the Computation issue in column 5 (other than Reverse Charge) and additional cash required, as there was a mapping issue in configuration files (payment file and computation/calculation in GSTR5 file). Due to the above mapping issue in configuration file, there was a delay in providing the correct resolution to the taxpayers and they were unable to file GSTR5 form within due date, hence late fee was charged to the taxpayers. Total late fee paid by five taxpayers = Rs. 32850/-CGST=Rs. 16425/- and SGST= Rs. 16425/- and the same has been refunded.	Issue was fixed on 29th Sep 2022 in production. These are the cases raised by taxpayers prior to the fix deployed in production.

Discussion and Decision:

Chairman ITGRC enquired whether taxpayers came to know about the double charge on their own or whether the same was found out by GSTN. EVP, GSTN replied that taxpayers logged the tickets at GSTN portal themselves raising the issue.

Decision: ITGRC took note of the data fixes done by the GSTN.

3.

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status

3.	Seeking waiver of interest for delayed submission of returns by Return Tax Preparer due to technical glitches in the state of West Bengal	10*	GSTR3 B	This issue is forwarded by the State of West Bengal. The total amount of Interest paid by them is Rs. 78103752.13/-.	Issue is being analyzed.

***ITGRC discussed 8 cases as one case was reported duplicate and one case was withdrawn by West Bengal.**

EVP, GSTN informed that that issue comprised of ten (10) cases and all of them were received from West Bengal. However, one case was a duplicate one and one was withdrawn by West Bengal. The details of the eight cases are:

i.

S. No.	ID	Name of Organization	Return Period	Form Filed on	Interest paid by Taxpayer ?	Any ticket raised by User for not able to file the form?	Interest to be paid as per the Tax Officer	Technical Analysis
1	19AAACI1681G1ZM	Indian Oil Corporation Limited	Jun-18	09-12-2018	No	Ticket No. - GA190718 0010639) dated 23.07.2018	Rs. 6,33,78,529/-	1. Credited Electronic Cash Ledger on 20.07.2018 for payment of GST of Rs. 90,50,48,103 /- vide Challan (CPIN) No. 18071900238178 & 18071900238204. 2. The taxpayer had filed but the ledger entries were NIL. 3.There was technical issue where the taxpayer Opened GSTR3B in multiple browser. This issue existed has been fixed in January 2021. 4. This technical glitch has been found to be correct.

Discussion and decision:

EVP, GSTN informed that the taxpayer had opened multiple web browsers and in one of the opened browser, taxpayer filled the return but did not save that. Meanwhile, the taxpayer opened another browser and submitted the return resulting into NIL return filing. However, the taxes were paid on time by the taxpayer in the cash ledger.

Chairman ITGRC enquired when the taxes were paid on time then why the interest was levied.

EVP, GSTN informed that as that was a technical issue, return was reset by GSTN and when the taxpayer re-filled the correct return, State of West Bengal levied the interest for late filing of the return. However, interest was not paid by the taxpayer.

Chairman ITGRC further enquired whether the issue in question was only of interest or the late fee also.

EVP, GSTN informed in affirmative and said that late fee appeared to be nominal while the interest part was a large amount.

Representative from West Bengal also suggested that as that was a technical glitch and the tax was deposited in the cash ledger, the burden of interest should be waived off.

EVP, GSTN further informed that in the past also, cases where the return was filed late due to technical glitch but the tax was paid by the due date, in such cases, GST Council had approved the waiver of interest.

Decision: Based on the findings of the GSTN and relying upon the past similar cases, ITGRC recommended that the case be put up before the GST Council for waiver of interest.

ii.

S. No.	ID	Name of Organization	Return Period	Form Filed on	Interest paid by Taxpayer?	Any ticket raised by User for not able to file the form?	Interest to be paid as per the Tax Officer	Technical Analysis
2	19AABCB5984E1ZI	Bengal Beverages Pvt. Ltd	Mar-18	21-04-2018	No	No	Rs. 41685/-	1. The taxpayer had electronic cash ledger was credited on 21st April 2018 whereas the taxpayer had deposited on 20th April 2018. (SBI) 2. No technical glitch has been found in this case. Its delayed reporting from the bank.

Discussion and decision:

EVP, GSTN informed that in this case the taxpayer had deposited cash in the State Bank of India on 20th April,2018 but the bank informed the same to the GSTN portal on 21st April,2018 which led to the one day delay. So, in this particular case, no technical glitch had been found in the GSTN system and that was only a delayed reporting by the bank.

Chairman ITGRC enquired whether there were such cases earlier also.

EVP, GSTN informed that such cases were rare.

Pr. Chief Commissioner, CGST, Delhi Zone submitted that in the past there were a lot of cases on the similar issues which occurred on a regular basis where banks did not credit on the due date. Then she submitted that if ITGRC referred that particular case to the GST Council for waiver of interest, then there would be a lot of cases which might be in the pipeline where such a waiver might be sought.

EVP, GSTN informed that generally such cases were not reported in the past ITGRC meetings since there was no technical glitch on the GSTN portal.

Chairman ITGRC stated that ITGRC was meant to address glitches on the GSTN and that in this case, there was no glitch in the portal as reported by GSTN and suggested that the same could not be recommended to the GST Council as it was out of the ambit of ITGRC.

Member from Tamil Nadu enquired whether the amount paid by the taxpayer on 20th April, 2018 was available in the cash ledger on 20th April.

GSTN informed that the taxpayer had paid the amount on 20th April, 2018 and the bank retained the amount on that particular day and remitted to the RBI on 21st April, 2018 hence, the cash ledger was credited on 21st April, 2018. Therefore, it came one day late into the accounts of the Government.

Decision: In view of the above, ITGRC rejected the case on the ground that there was no technical glitch in the portal.

iii.

S. No.	ID	Name of Organization	Return Period	Form Filed on	Interest paid by Taxpayer?	Any ticket raised by User for not able to file the form?	Interest to be paid as per the Tax Officer	Technical Analysis
3	19AABCB5984E1ZI	Bengal Beverages Pvt. Ltd	Mar-20	18-05-2020	No	NO	Rs. 75,564/-	This issue is due to outbreak of COVID ,due to unavailability of Digital signature , it led to delayed filing. Electronic Cash Ledger credited on 20th April 2020.This is not a technical issue. 2. The EVC for all taxpayers facility was deployed on 20th April 2020 for GST Portal and later provided for APIs on 12th Nov 2020.

Discussion and decision:

EVP, GSTN informed that this was not a case of technical glitch as the return could not be filed due to unavailability of digital signature.

Decision: ITGRC took note of the data analyzed by the GSTN and rejected the case for waiver of interest.

iv.

S. No.	ID	Name of Organization	Return Period	Form Filed on	Interest paid by Taxpayer?	Any ticket raised by User for not able to file the form?	Interest to be paid.as per the Tax Officer	Technical Analysis
4	19AAACW2192G1Z8	Wacker Metroark Chemicals Pvt. Ltd	Oct-18	07-12-2018	No	Ticket No-20181205441766 8	Rs. 38560.08	1. Credited electronic cash ledger on 16.11.2018 and 19.11.2018 for payment of GST under Reverse Charge and Forward Charge of Rs. 18,42,449.00 and 29,01,760.00 respectively vide Challan (CPIN) No 18111900105454 and 18111900161310. 2. The taxpayer is getting error " Something seems to have gone wrong while processing your request. Please try again. If error persists quote error number GSTN-EXEC1003 when you contact customer care for quick resolution" 3. The data for the GSTIN could not be found in cache and was later updated in the Redis cache. 4. This technical glitch has been found to be correct.

Discussion and decision:

EVP, GSTN informed that this was a case of technical nature due to coding issue and other data issues during the year 2018 and many taxpayers had similar issues which were rectified later.

Decision: Based on the technical analysis by the GSTN, ITGRC took note of the data fix by the GSTN and decided to recommend the case for waiver of interest to the GST Council.

v.

S. No.	ID	Name of Organization	Return Period	Form Filed on	Interest paid by Taxpayer?	Any ticket raised by User for not able to file the form?	Interest to be paid as per the Tax Officer	Technical Analysis
5	19AADFH6125N1Z2	HABCON ENGINEERS	Apr-18	09-09-2019	No	No	Rs. 61303/-	1. The taxpayer had filed GSTR3B on 19.05.2018 as it was filed incorrectly. 2. The GSTR3B form was reset on 9.9.2019. 3. As the GSTR3B form was reset, it may be considered as a case of technical glitch.

Discussion and decision:

Chairman ITGRC enquired why the request of resetting the return was made when the taxpayer had an option to rectify the same in the subsequent return and whether the same was due to some technical glitches.

Representative from West Bengal informed that they did not have the information with them at present and would update the ITGRC later.

Chairman ITGRC stated that it did not seem to be a case of technical nature and same should not be recommended for waiver of interest to the GST Council.

Pr. Chief Commissioner, CGST Delhi and Member from Tamil Nadu also supported the view of Chairman.

Decision: The ITGRC rejected the case.

vi.

S. No.	ID	Name of Organization	Return Period	Form Filed on	Interest paid by Taxpayer?	Any ticket raised by User for not able to file the form?	Interest to be paid as per the Tax Officer	Technical Analysis
6	19AABCD7720L1ZF	FRESENIUS KABI ONCOLOGY LTD	Jul-17	28-08-2017	No	No	Rs. 21541.25	1. The claim made by the taxpayer that the portal was giving error "CGST credit needs to be completely utilised before cross utilisation of SGST credit against IGST tax liability" is correct as his CGST Balance of 48 paisa in his credit ledger as reported by taxpayer on 26th August 2017. 2. There was defect in TRAN1 where entries in paisa was made in the ITC ledger after filing and the taxpayer has filed TRAN1 on 25th Aug 2017. 3. The taxpayer has paid IGST of Rs 1, 53,871 on 28th Aug 2017 and filed GSTR3B for July 2017. 3. The claim of the taxpayer is correct that this error was being shown to the taxpayer.

Discussion and decision:

EVP, GSTN informed that there was a technical issue in that case due to which the taxpayer was facing problem.

Decision: ITGRC took note of the data analyzed by the GSTN and decided to recommend for waiver of interest in this case.

vii.

S. No.	ID	Name of Organization	Return Period	Form Filed on	Interest paid by Taxpayer?	Any ticket raised by User for not able to file the form?	Interest to be paid as per the Tax Officer	Technical Analysis
7	19AABCD7720L1ZF	FRESENIUS KABI ONCOLOGY LTD	Aug-17	17-10-2017	No	NO	Rs. 4,73,792.72	1. In the initial launch of GSTR3B , at the time of Submit, if a exception is not handled , the record would get stuck. The solution was to reset, so that the taxpayer can Submit again. 2. The claim made by the taxpayer regarding technical glitch is correct.

Discussion and decision:

EVP, GSTN informed that there was a technical issue in this case due to which the taxpayer was facing problem.

Chairman ITGRC enquired why the issue of 2017 was being raised now after a period of more than five years.

EVP, GSTN informed that they had received a representation from the taxpayer consequent upon demand of interest by Government of West Bengal.

Decision: ITGRC took note of the data fix done by the GSTN and decided to recommend for waiver of interest.

viii.

S. No.	ID	Name of Organization	Return Period	Form Filed on	Interest paid by Taxpayer?	Any ticket raised by User for not able to file the form?	Interest to be paid as per the Tax Officer	Technical Analysis
8	19AAECS6573R1ZC	SAI SULPHONATES PVT. LTD	July'17 to Feb'18	July 17- 2018-04-02	No	NO	Rs. 1,21,65,548/-	1. There was technical glitch in TRAN1 form due to coding defect. Instead of declaring the variable as a local variable, it was declared as global variable. 2. Any taxpayer who would distribute the credit to other states on the same PAN, the data posted in the ITC ledger was found to be incorrect. 3. This issue was corrected on 8th Dec 2017 and finally corrected on 2nd April 2018. 4. The claim made by the taxpayer regarding technical glitch is correct.
				August 17- 2018-04-02				
				September 17- 2018-04-03				
				October 17- 2018-04-03				
				November 17- 2018-04-06				
				December 17- 2018-04-06				
				January 18- 2018-04-07				

				February 18- 2018-04-07				

Discussion and decision:

EVP, GSTN informed that there was a defect in Tran-1 form due to coding defect which was rectified by GSTN later. The first correction happened on 8th December, 2017 and finally by 2nd April, 2018, all the taxpayers' ledgers were corrected.

Decision: ITGRC took note of the data fixes done by the GSTN and recommended for waiver of interest.

6(c) Thereafter, EVP, GSTN explained the following nine cases where there were technical issues with no financial implication and where data was known: -

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
1	2	3	4	5	6
1	Data issue due to partial reset happened on click of reset button while filing GSTR- 3B (RQM: RET_3B_15222).	1	GSTR-3B	It may be recalled that initially, there was a four-tier system of filing return in Form GSTR-3B, viz. Save, Submit, Offset liability and File. All saved entries used to become non-editable after clicking on 'Submit' button. Liability register and Credit ledger used to be updated at submit stage. In the beginning, lot of complaints used to be received due to freezing of entries before filing (at submit stage). In the beginning, returns lying at submit stage were reset from the backend as lot of complaints were received on account of inadvertent mistakes.	Permanent fix is not required because RESET button is removed from system. These are the cases raised by taxpayers prior to the implementation of RESET button.
2	When Taxpayer was validating the statement in Refund, system is giving error "RF-FCAS1007" and not allowing to file the Refund for below two	6	GSTR-1	After analysis we have found that Meta Data column is not present in "Invoice Detail" table. This is because we have noticed connection errors while inserting data to Invoice detail table for	It is fixed in production on 26th April 2022. These are the cases raised by taxpayers prior to the fix deployed in production.

	mentioned types: 1. Refund on account of ITC accumulated due to Inverted Tax Structure 2. On account of supplies made to SEZ unit/ SEZ developer (without payment of tax).			these 4 taxpayers, due to which invoices went to error. Description of error code: RF-FCAS1007: Something seems to have gone wrong while processing your request. Please try again. If error persists quote error number {0} when you contact customer care for quick resolution.	
3	Taxpayers were getting "Data for the internal Transaction Id Already Posted" while filing CMP-08.	151	CMP-08	For few taxpayers, all ledger tables were updated successfully but request status did not change from "Return To File" to "File" in Return Filing Status table.	Reason 1- Fixed on 14th June 2021 via ICR-12663. Reason2- Work in Progress.
4	Rectification of rejected original record for already accepted amendment record. Deductor has amended the original record in favour of a different deductee, but the original record was not deferred which is supposed to get defer.	1	GSTR-7	The status of Original record needs to be deferred after it was amended. But it was not deferred due to technical glitch.	Issue is fixed
5	Reset of form TRAN-1. Taxpayers were unable to file their GSTR3B form as their TRAN-1 form is stuck in submitted state.	328	TRAN-1	Taxpayers were unable to file their GSTR3B form as their TRAN-1 form is stuck in submitted state.	Issue is fixed
6	Taxpayer has filed GSTR-04 form without clearing the liability amount. The taxpayers were getting error while filing CMP-08 form "'ERROR!! Liability for previous tax period is yet to be paid'.	1	CMP-08	Transaction handling was not proper due to mix of XA/ Non-XA transactions in GSTR-4. Due to this, in case of any failure rollback was not done completely from all the respective data sources. In this case, filing status has been updated as Fil in return filing status table w/o updating No in column Is Open of Return Liability Master ledger table	Partially fixed in production on 14th Jun 2021 via ICR-12663. Another RCA is Known issue across the application. Analysis is under progress.

				besides the rollback of liability setoff entries in ledger.	
7	Reset of Form GST RFD-01C – On request from the State of Maharashtra.	1	GST RFD-01C	In Manual refund applications (Prior to Sep 2019), RFD 01B was issued by Tax officer for re-crediting ITC of the rejected amount. RFD 01C option was given to the Tax officer for rectifying any mistake in RFD 01B. In the present case, the officer has committed mistake in RFD 01C also and the nodal officer of the State has requested GSTN to reset RFD 01C. In this case, no credit was given earlier either in RFD 01B/RFD 01C.	Issue is fixed
8	Taxpayers were unable to file their further return period and getting error message as "Liability for previous tax period is yet to be paid"	15	GSTR-4 Annual	The taxpayers were facing issues in filing any further returns after filing of GSTR-4 annual form as the offset of liability has not happened but the filing has been completely successfully. Following amount was debited from the cash ledger as the same was not debited at the time of original filing: Total Tax = Rs. 44268 /- (CGST Tax = Rs. 22134 /- and SGST Tax = Rs. 22134/-)	This issue has been fixed on 6th Oct 2022 in production. These are the cases raised by taxpayers prior to the fix deployed in production.

9	Re- crediting of claimed amount after issuance of deficiency memo – Excess cash ledger balance refund.	88	Refund Form GST RFD-03	The issue pertains to Refund applications filed under the Category of refund of Excess Cash ledger balance. After issuance of Deficiency memo, the amount claimed by the taxpayer has to be re-credited back to the Taxpayer's cash ledger. The claimed amount was not re-credited to the Cash ledger after issuance of Deficiency memo by the Tax officer in 88 cases. The blocked amount of the taxpayer i.e., Rs 15,769,946/- (CESS: Rs. 4100/-, CGST: Rs. 6248456/-, SGST: Rs. 6409527/- and IGST: Rs. 3107863/-) will be credited back to cash ledger.	Issue is fixed for 88 cases. Work in progress for permanent code fix.

Discussion and decisions:

ITGRC took note of the data fixes done by the GSTN.

To summarize, 15 issues were presented by GSTN for the consideration of ITGRC, including 3 court cases.

One of the court cases pertained to changing the effective date of cancellation of registration as directed by the Hon'ble HC of Delhi. GSTN has informed that the program will take some more time to rectify the issue from backend. Data fix in this case has been approved by ITGRC.

The second court case pertained to a taxpayer who did not receive log in credentials and therefore could not complete subsequent compliance requirements including return filing. ITGRC approved the migration of registration along with recommendations to GST Council for waiver of late fee and interest.

The third case pertained to requests received from various States to enable Appellate authority to restore APL 01 where Appeal orders have been remanded back by High Courts. GSTN informed that the remand back functionality is still under development, therefore, the disposed appeal order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted". ITGRC agreed with proposal.

Three cases where there were technical issues affecting locally with financial implications and where the correct data was known were thereafter discussed. 2 of the cases pertained to refund of late fee due to

delayed filing of Forms GSTR 5 and 6. An amount of Rs. 33,700/- has been refunded. ITGRC has taken note of the data fixes. The third case was for waiver of interest for delayed submission of returns due to technical glitches by 8 taxpayers in the State of West Bengal. Based on the technical analysis by the GSTN, ITGRC took note of the data fixes by the GSTN and decided to recommend the case for waiver of interest to the GST Council in 5 cases. The amount involved in the 5 cases is Rs. 7,60,77,971/-.

Thereafter, nine issues where there were technical issues with no financial implication and where data was known were presented by GSTN which involved issues like taxpayers not being able to file returns due to reasons such TRAN 1 stuck or error message like “liability for previous tax period not paid”. ITGRC took note of the data fixes in these 592 cases.

Annexure-1

Centre:

i. Member (GST), CBIC – Sh. ShashankPriya (Chairman, ITGRC)
ii. Pr. Chief Commissioner, CGST, Delhi Zone – Smt. Mallika Arya
iii. Pr. ADG, DG Systems, Chennai – Sh.S.K.Vimalanathan

States:

i. Special Commissioner, State Tax, West Bengal – Smt. BratatiDasgupta
ii. Additional Excise & Taxation Commissioner, Haryana – Sh. Siddharth Jain
iii. Joint Commissioner (IT), State Tax, Tamil Nadu – Sh. Rasal Doss Solomon
iv. Joint Commissioner, State Tax, Gujarat – Sh. Mahesh Jaani

GST Council Secretariat:

i. Additional Secretary, GSTC- Sh. Pankaj Kumar Singh
ii. Joint Secretary, GSTCS- Smt. B. Sumidaa Devi

Special Invitees:

i. Executive Vice President, GSTN- Sh. DheerajRastogi
ii. Executive Vice President, GSTN- Sh. Nirmal Kumar

Annexure-2

Agenda on Data Fix issues

Technical Issues Requiring Data Fix of the Processed Incorrect Data through Backend Utilities

The changes in GST law / Rules, the representations received from taxpayers and other stakeholders require alterations to be continuously made in the GST System. GSTN has therefore adopted an agile methodology of developing applications for GST System keeping it modular to handle frequent changes in law and rules incorporated in a running application. This has necessitated integrating all new application changes downstream being dependent on the module undergoing the change and led to following concerns:

- Some corner scenarios owing to varying taxpayer actions and system behaviour, when subjected to heavy load, go unhandled leading to inconsistent data persisting in GST System.
- The data inconsistencies vary from ledger getting improper debits/credits, the return details stored in the system having incorrect information relating to situations where an irreversible commit has happened in the database.
- No option available to taxpayer to seek remedy in GST System leading to a need of performing data fixes through auditable utilities.

These issues generally have been noticed after

- A complaint is raised by taxpayer/ tax officer
- Result of a periodic internal and external audits.

In order to resolve these issues, the processed incorrect data requires fixing, collecting correct data besides solving the software/platform issues being faced by respective stakeholders. Accordingly, GSTN has initiated fixing of technical issues identified, as per the SOP approved by the ITGRC in the15th meeting held on 12/08/2021, which is as below:

i. Analysis of data discrepancy.
ii. Confirmation of discrepancy sought from MSP.
iii. Upon confirmation, utility to be created by MSP to extract similar cases from GST System data.
iv. A root cause analysis conducted to fix the issue and implemented by MSP in consultation with GSTN to rectify data inconsistency.
v. Scripts created for data fix and tested in multiple cycles by MSP and GSTN.
vi. Approval note presented to competent authority to fix the issue.

vii. After approval, audit entries created for each change affecting the data.

viii. Scripts executed and post execution state of data stored for reference later.

ix. List of all such changes to be presented and explained to GST policy wing & ITGRC and periodic internal audit also to be undertaken.

Data Fix cases are accordingly presented to ITGRC for deliberations and decision as mentioned in the attached Annexure.

Annexure

Technical Issues Requiring Data Fixes through Backend Utility (Period -12thNov 2022 to 03rd Feb 2023)

Cases Requiring Internal Approval of SVP, EVP/CEO or Post facto Approval of ITGRC									
S. No.	**Issue reported**	**Approved By**	**Date of Approval**	**No. of Cases Impacted**	**Financial Implication**	**Module**	**Correct Data Known / Not Known**	**Detail Description**	**Status**
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
Cases having no financial implications									
1	Data issue due to partial reset happened on click of reset button while filing GSTR- 3B (RQM: RET_3B_15222).	EVP (Services)	25-01-2023	1	No	GSTR-3B	Known	It may be recalled that initially, there was a four-tier system of filing return in Form GSTR-3B, viz. Save, Submit, Offset liability and File. All saved entries used to become non-editable after clicking on 'Submit' button. Liability register and Credit ledger used to be updated at submit	Permanent fix is not required because RESET button is removed from system. These are the cases raised by taxpayers prior to the implementation of RESET

								stage. In the beginning, lot of complaints used to be received due to freezing of entries before filing (at submit stage). In the beginning, returns lying at submit stage were reset from the backend as lot of complaints were received on account of inadvertent mistakes.	button.
2	When Taxpayer was validating the statement in Refund, system is giving error "RF-FCAS1007" and not allowing to file the Refund for below two mentioned types: 1. Refund on account of ITC accumulated due to Inverted Tax Structure 2. On account of supplies made to SEZ unit/ SEZ developer (without payment of tax).	EVP (Services)	28-11-2022	6	No	GST R-1	Known	After analysis we have found that Meta Data column is not present in "Invoice Detail" table. This is because we have noticed connection errors while inserting data to Invoice detail table for these 4 taxpayers, due to which invoices went to error. <u>Description of error code:</u> RF-FCAS1007: Something seems to have gone wrong while processing your request. Please try again. If error persists quote error number {0} when you contact customer care for quick resolution.	It is fixed in production on 26th April 2022. These are the cases raised by taxpayers prior to the fix deployed in production.
3	Taxpayers were getting "Data for the internal Transaction Id Already Posted" while filing CMP-08.	EVP (Services)	10-01-2023	151	No	CMP-08	Known	For few taxpayers, all ledger tables were updated successfully but request status did not change from "Return To File" to	<u>Reason 1</u>- Fixed on 14th June 2021 via ICR-12663.

								"File" in Return Filing Status table.	Reason2- Work in Progress.
4	Rectification of rejected original record for already accepted amendment record. Deductor has amended the original record in favour of a different deductee, but the original record was not deferred which is supposed to get defer.	EVP (Services)	30-12-2022	1	No	GSTR-7	Known	The status of Original record needs to be deferred after it was amended. But it was not deferred due to technical glitch.	Issue is fixed
5	Reset of form TRAN-1. Taxpayers were unable to file their GSTR3B form as their TRAN-1 form is stuck in submitted state.	EVP (Services)	27-01-2023	328	No	TRAN-1	Known	Taxpayers were unable to file their GSTR3B form as their TRAN-1 form is stuck in submitted state.	Issue is fixed
6	Taxpayer has filed GSTR-04 form without clearing the liability amount. The taxpayers were getting error while filing CMP-08 form "'ERROR!! Liability for previous tax period is yet to be paid'.	EVP (Services)	23-11-2022	1	No	CMP-08	Known	Transaction handling was not proper due to mix of XA/ Non-XA transactions in GSTR-4. Due to this, in case of any failure rollback was not done completely from all the respective data sources. In this case, filing status has been updated as Fil in return filing status table w/o updating No in column Is Open of Return Liability Master ledger table besides the rollback of liability setoff entries in ledger.	Partially fixed in production on 14th Jun 2021 via ICR-12663. Another RCA is Known issue across the application. Analysis is under progress.

7	Reset of Form GST RFD-01C – On request from the State of Maharashtra.	EVP(Services)	18-01-2022	1	No	GST RFD-01C	Known	In Manual refund applications (Prior to Sep 2019), RFD 01B was issued by Tax officer for recrediting ITC of the rejected amount. RFD 01C option was given to the Tax officer for rectifying any mistake in RFD 01B. In the present case, the officer has committed mistake in RFD 01C also and the nodal officer of the State has requested GSTN to reset RFD 01C. In this case, no credit was given earlier either in RFD 01B/RFD 01C.	Issue is fixed
8	Taxpayers were unable to file their further return period and getting error message as "Liability for previous tax period is yet to be paid"	EVP (Services)	28-11-2022	15	No	GST R-4 Annual	Known	The taxpayers were facing issues in filing any further returns after filing of GSTR-4 annual form as the offset of liability has not happened but the filing has been completely successfully. Following amount was debited from the cash ledger as the same was not debited at the time of original filing: Total Tax = Rs. 44268 /- (CGST Tax = Rs. 22134 /- and SGST Tax = Rs. 22134 /-)	This issue has been fixed on 6th Oct 2022 in production. These are the cases raised by taxpayers prior to the fix deployed in production.

9	Re- crediting of claimed amount after issuance of deficiency memo – Excess cash ledger balance refund.	EVP (Services)	16-01-2023	88	No.	Refund Form GST RFD-03	Known	The issue pertains to Refund applications filed under the Category of refund of Excess Cash ledger balance. After issuance of Deficiency memo, the amount claimed by the taxpayer has to be re-credited back to the Taxpayer's cash ledger. The claimed amount was not re-credited to the Cash ledger after issuance of Deficiency memo by the Tax officer in 88 cases. The blocked amount of the taxpayer i.e., Rs 15,769,946/- (CESS: Rs. 4100/-, CGST: Rs. 6248456/-, SGST: Rs. 6409527/- and IGST: Rs. 3107863/-) will be credited back to cash ledger.	Issue is fixed for 88 cases. Work in progress for permanent code fix.
Cases having Financial Implications:										
10	<u>Reversal of late fee in GSTR-6 form.</u> Input Service Distributor (ISD) was unable to file GSTR-6 form on the GST portal due to error "Error! System Failure" displayed on the portal for the tax period August 2022.	EVP (Services)	18-01-2023	1	Yes	GST R-6	Known	ISD was unable to file return in form GSTR6 by due date, for the tax period August 2022, due to the error "Error! System Failure" displayed on the portal. Due to delayed filing of return the ISD had paid late fee. It had happened due to breakage in internal communication of the APIs on the GST portal. Total late fee refunded to the ISD = Rs. 850 /- (CGST = Rs. 425 /- and SGST = Rs. 425 /-)	Issue is fixed

11	Reversal of late fee in GSTR-5 form. Non Resident Taxable Person were getting error "double amount of the actual amount while creating challan through liability offset window" while filing GSTR-5 form.	EVP (Services)	18-01-2023	5	Yes	GSTR-5	Known	There was the Computation issue in column 5 (other than Reverse Charge) and additional cash required, as there was a mapping issue in configuration files (payment file and computation/calculation in GSTR5 file). Due to the above mapping issue in configuration file, there was a delay in providing the correct resolution to the taxpayers and they were unable to file GSTR5 form within due date, hence late fee was charged to the taxpayers. Total late fee paid by five taxpayers = Rs. 32850/- CGST=Rs. 16425/- and SGST= Rs. 16425/- and the same has been refunded.	Issue was fixed on 29th Sep 2022 in production. These are the cases raised by taxpayers prior to the fix deployed in production.
12	Seeking waiver of interest for delayed submission of returns by Return Tax Preparer due to technical glitches in the state of West Bengal	NA	NA	10	Yes	GSTR-3B	NA	This issue is forwarded by the State of West Bengal w.r.t 6 taxpayers. The total amount of Interest paid by them is Rs. 78103752.13/-.	Issue is being analyzed.
Court Cases:									

13	Rectification of effective date of cancellation M/s Outpace Marketing (GSTIN 07AAFFO8689N1Z9) had applied for cancellation of registration on 23.3.2021 and erroneously entered the effective date of cancellation as 20.3.2020 instead of 20.3.2021 as informed by the officer.	EVP(Services)		1	No	Registration. Form GST REG-19	Known	Through letter recd. from Additional Commissioner, CGST, East Delhi, it was informed that jurisdictional Officer has approved the rectification of effective date of cancellation from 20.3.20 to 20.3.21 to be done. This has been approved by Commissioner. The Commissioner has requested GSTN to rectify the effective date of Cancellation as per Hon`ble High Court of Delhi direction.	Work in Progress.
14	M/s Swapnadip Enterprises had not received the Login credentials of the GST Portal for Provisional ID19AEAPG7710H1ZP .On account of non-receipt of Login credentials, the subsequent compliances including return filing were not completed by the taxpayer. The Hon'ble Calcutta High Court directed GSTN to examine the issue. GSTN vide letter dated 24.11.2021 has stated that they are not the appropriate authority to pass any order as it is an implementing agency and has no adjudicating powers and the matter was referred to proper	NA	NA	1	No	Registration	Yes	<u>Points for ITGRC consideration:</u> On account of non-receipt of Login credentials, the subsequent compliances including return filing were not completed by the taxpayer The recommendation received from Nodal Officer, Kolkata CGST Zone, is to activate the GSTIN 19AEAPG7710H1ZP w.e.f. 1st July, 2017 and provide login credentials for the said GSTIN to the petitioner. However, technically, this is not possible on the system as he has not completed his enrolment form at the time of migration as per our database. Therefore, system does not allow to generate registration number directly in this case. Provisional GSTIN cannot be activated from backend as	ITGRC to deliberate on this issue

	officer to examine the issue. Basis that Nodal Officer for Kolkata CGST Zone has submitted the matter before ITGRC to consider taxpayer's request for activating the GSTIN and providing login credentials.							enrollment application form is not live anymore and also data is not available for such taxpayers in our master tables and cache which was supposed to be provided by such taxpayers as a part of migration. Therefore, such taxpayer can't be activated with same number. Hence, as per the parallel approved process, taxpayer can be advised to take new registration on the same PAN and post approval and allocation of new GSTIN, it can be swapped with old GSTIN. Hence, the taxpayer needs to apply for new GST Registration under Form GST REG-01 on the portal and accordingly registration will be granted w.e.f. 01.07.2017. As recommended by Nodal Officer, Kolkata CGST Zone to enable furnishing of GSTR-1 and GSTR-3B by the Taxpayer w.e.f. 1st July, 2017, inputs are required on the following: a) If he files all the pending returns, whether reversal of late fee and waiver of interest shall be permitted? b) Whether he can avail input tax credit? c) Whether he can file TRAN-1, if required?	

15	Reverting APL 01 to submitted status as APL 04/02 has been remanded back byHon`ble High Courts	EVP (Services)	Different dates	48	No	Appeal APL 01	Known	Requests have been received from various states to enable Appellate authority to restore APL 01 where either Appeal orders APL 04 or APL 02 have been remanded back by High Courts of different States. Functionality is not available for remand back to Appellate authority. The remand back functionality is still under development, therefore, the disposed appeal order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted".	Data fix provided and the Appeal application ARNs were restored to "Appeal Submission" stage.

Annexure-3

S. No.	Types of Issues	Count
1	Technical issue with no financial Implications – Correct data known	9 (Slide No. 4 to 12)
2	Technical issue affecting locally with financial implications – Correct data known	3 (Slide No. 14 to 16)
3	Court Direction	3 (Slide No. 18 to 20)

1. Technical Issue With No Financial Implications – Correct Data Known

1. Data issue due to partial reset in GSTR 3B

#	Heading	Details
1	**Issue Summary**	Data issue due to partial reset happened on click of reset button.
2	**Issues Description**	It may be recalled that initially, there was a four tier system of filing return in Form GSTR -3B, viz. Save, Submit, Offset liability and File. All saved entries used to become non-editable after clicking on 'Submit' button. Liability register and Credit ledger used to be updated at submit stage. These affected taxpayers have already filed their respective GSTR -3B returns but they did not receive their input tax credit amounts as the same was nullified from the credit ledge.
3	**Reason**	This is an old issue when there used to be a reset button on the portal.
4	**Status**	Permanent fix is not required because RESET button is removed from system. Old return period data are being fixed by backend query.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

2. Meta Data Column missing in Invoice table of HBase

#	Heading	Details
1	**Issue Summary**	When Taxpayer was validating the statement in Refund, system was giving error "RF - FCAS1007" and not allowing to file the Refund for below two mentioned type: 1. Refund on account of ITC accumulated due to Inverted Tax Structure 2. On account of supplies made to SEZ unit/ SEZ developer (without payment of tax).
2	**Issues Description**	Description of error code: RF-FCAS1007: Something seems to have gone wrong while processing your request. Please try again. If error persists quote error number {0} when you contact customer care for quick resolution.
3	**Reason**	Meta Data column was not present in "Invoice Detail" table. This was because we have noticed connection errors while inserting data to Invoice Detail table, due to which invoices went to error.
4	**Status**	Code was fixed in production on 26 th April 2022. Old cases are being fixed by backend query.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	6

3. Issue in filing GST CMP -08

#	Heading	Details
1	**Issue Summary**	Taxpayers were getting "Data for the internal Transaction Id Already Posted" while filing CMP08.
2	**Issues Description**	For few taxpayers, all ledger tables were updated successfully but request status did not change from Return To File to File in Return Filing Status table.
3	**Reason**	Reason 1 -Transaction handling is not proper due to mix of XA (Transaction Handling Manager)/ Non-XA transactions in CMP08. Due to this, final request status did not update correctly. Reason 2 - Proceed to file status is updated to Ready To Fil but commit was delayed meanwhile user triggered filing request. During filing request ledger entries were made and finally when trying to update Filing Status to Fil, record is not available since commit is delayed.
4	**Status**	Reason- fixed on 14 th June 2021 via ICR -12663. Reason2- is in progress. Old cases are being fixed by backend query.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	151

4. Rectification of rejected original record in GSTR -7

#	Heading	Details
1	**Issue Summary**	Deductor has amended the original record in favour of a different deductee, but the original record was not deferred which is supposedto get defer.
2	**Issues Description**	The status of Original record needs to be deferred after it was amended. But it was not deferred due to technical glitch.
3	**Reason**	Due to technical glitch the status of Original record which needs to be deferred after amendment was not deferred and allows R2X user to take action on that Original record.
4	**Status**	It was fixed in production on 26th Jan 2022 via RQM 22154 and ICR 15230. Old cases are being fixed by backend query.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

5. Reset of Form TRAN-1.

#	Heading	Details
1	**Issue Summary**	Taxpayers were unable to file their GSTR 3B form as their TRAN-1 form is stuck in submitted state.
2	**Issues Description**	Taxpayers were unable to file their GSTR 3B form as their TRAN-1 form is stuck in submitted state.
3	**Reason**	There is check in GSTR 3B that TRAN1 or the previous month GSTR 3B should be filed before allowing the taxpayer to file GSTR 3B for the current tax period.
4	**Status**	Issue is fixed
5	**Financial Implications**	No
6	**No. of Impacted Cases**	328

6. Issue in filing CMP 08

#	Heading	Details
1	**Issue Summary**	The taxpayers were getting error while filing CMP -08 form "'ERROR!! Liability for previous tax period is yet to be paid'.
2	**Issues Description**	Transaction handling was not proper due to mix of XA (Transaction Handling Manager)/ Non-XA transactions in GSTR-4. Due to this, in case of any failure rollback was not done completely from all the respective data sources. In this case, filing status has been updated as Fil in return filing status table w/o updating No in column Is Open of Return Liability Master ledger table besides the rollback of liability setoff entries in ledger.
3	**Reason**	This is due to the fact that after filing of the quarterly GSTR -4 form, although ARN has been generated and it is being shown as FILED to the taxpayer, the posting in the ledger has been rolled partially back due to technical issue (XAI/Non XAI transaction issue)
4	**Status**	Partially fixed in production on 14th Jun 2021 via ICR -12663. Another RCA is Known issue across the application. Analysis is under progress.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

7. Reset of Form GST RFD-01C

#	Heading	Details
1	**Issue Summary**	Reset of Form GST RFD -01C – On request from the State of Maharashtra
2	**Issues Description**	In Manual refund applications (Prior to Sep 2019), Form GST RFD 01B was issued by Tax officer for re-crediting ITC of the rejected amount. Form GST RFD 01C was issued by the Tax officer for rectifying any mistake in RFD 01B. In this case, the officer has committed mistake in RFD 01C also and the nodal officer of the State has requested GSTN to reset RFD 01C. In this case, no credit was given earlier either in RFD 01B/RFD 01C.
3	**Reason**	Tax officer has committed mistake and no functionality available for rectification of RFD -01C.
4	**Status**	RFD-01C reset has been provided to enable the officer to issue RFD 01C one more time.
5	**Financial Implications**	No. The ITC due to the taxpayer will be credited to the Taxpayer.
6	**No. of Impacted Cases**	1

8. Issue in filing GSTR-4 Annual

#	Heading	Details
1	**Issue Summary**	Few composition taxpayers were unable to file their returns for subsequent tax periods as liability of previous tax period was not debited.
2	**Issues Description**	The taxpayers were facing issues in filing any further returns after filing of GSTR -4 annual form as the offset of liability did not happen correctly. System was giving an error message as Liability for previous tax period is yet to be paid while coming to file subsequent returns/forms.
3	**Reason**	This had happened only for those taxpayers who had amount in negative liability statement.
4	**Status**	This issue has been fixed on 6th Oct 2022. These cases pertain to the period prior to the fixation of this defect .
5	**Financial Implications**	No. Following amount was debited from the cash ledger as the same was not debited at the time of original filing: Total Tax = Rs. 44268 / - (CGST Tax = Rs. 22134 / - and SGST Tax = Rs. 22134 / -)
6	**No. of Impacted Cases**	15

09. Non credit of amount after issuance of Deficiency Memo

#	Heading	Details
1	**Issue Summary**	Re- crediting of claimed amount after issuance of deficiency memo – Excess cash ledger balance refund.
2	**Issues Description**	The issue pertains to Refund applications filed under the Category of refund of Excess Cash ledger balance. After issuance of Deficiency memo, the amount claimed by the taxpayer has to be re -credited back to the Taxpayer's cash ledger. However for 88 cases , the claimed amount was not re-credited to the Cash ledger after issuance of Deficiency memo by the Tax officer .
3	**Reason**	Team is analysing the root cause for giving permanent solution for future cases.
4	**Status**	Data fix to be provided for the 88 cases to recredit taxpayer's cash ledger.
5	**Financial Implications**	No. The blocked amount of the taxpayer i.e. Rs 15,769,946/ - (CESS: Rs. 4100/ -, CGST: Rs. 6248456/ -, SGST: Rs. 6409527/ - and IGST: Rs. 3107863/ -) will be credited back to cash ledger.
6	**No. of Impacted Cases**	88

2. Technical issue affecting locally with financial implications – Correct data known

10. Reversal of late fee in GSTR6 form

#	Heading	Details
1	**Issue Summary**	Input Service Distributor (ISD) was unable to file GSTR6 form on the GST portal.
2	**Issues Description**	ISD was unable to file return in form GSTR6 by due date, for the tax period August 2022, due to the error "Error! System Failure" displayed on the portal. Due to delayed filing of return the ISD had paid late fee.
3	**Reason**	It had happened due to breakage in internal communication of the APIs on the GST portal.
4	**Status**	This issue was resolved with rebooting of the pods which is generally done after production deployment.
5	**Financial Implications**	Yes. Total late fee refunded to the ISD is Rs. 850 /- (CGST = Rs. 425 /- and SGST = Rs. 425 /-)
6	**No. of Impacted Cases**	1

11. Reversal of late fee in GSTR5 form

#	Heading	Details
1	**Issue Summary**	System was computing incorrect liability in case of Non Resident Taxable Person (NRTP) while filing GSTR5 form.
2	**Issues Description**	There was the Computation issue in column 5 (other than Reverse Charge) and additional cash required, as there was a mapping issue in configuration files (payment file and computation/calculation in GSTR5 file). Due to the above mapping issue in configuration file, there was a delay in providing the correct resolution to the taxpayers and they were unable to file GSTR5 form within due date, hence late fee was charged to the taxpayers.
3	**Reason**	Taxpayers were unable to file the GSTR5 due to the double liability amount displayed on the portal.
4	**Status**	Permanent fix done via ECR #18110 and RQM#23450 on 29th Sep,2022 and the tax payers have filed the return after the issue was fixed.
5	**Financial Implications**	Yes. Total late fee refunded to the five taxpayers is Rs. 32850/ - (CGST= Rs. 16425/ - and SGST= Rs. 16425/ -)
6	**No. of Impacted Tax payers**	5

12. Waiver of Interest liability due to technical glitches

#	Heading	Details		
1	**Issue Summary**	Seeking waiver of interest for delayed submission of returns by Return Tax Preparer due to technical glitches in the state of West Bengal		
2	**Issues Description**	Below are 10 issues reported for this issues		
		#	RTPs	Interest waiver amount
		1	Indian Oil Corporation Limited (GSTIN– 19AAACI1681G1ZM) June 2018	Rs. 6,33,78,529/-
		2	Bengal Beverages Pvt. Ltd (GSTIN 19AABCB5984E1ZI) March 2018	Rs. 41685/-
		3	Bengal Beverages Pvt. Ltd (GSTIN 19AABCB5984E1ZI) March 2020	Rs. 75,564/-
		4	Bengal Beverages Pvt. Ltd (GSTIN 19AABCB5984E1ZI) September 2017	Rs. 18,08,669/-
		5	Wacker Metroark Chemicals Pvt. Ltd (19AAACW2192G1Z8) October 2018	Rs. 38560.08/-
		6	HABCON ENGINEERS (19AADFH6125N1Z2) April 2018	Rs. 61303.00/-
		7	FRESENIUS KABI ONCOLOGY LTD (GSTIN– 19AABCD7720L1ZF), July 2017	Rs. 21541.25/-
		8	FRESENIUS KABI ONCOLOGY LTD (GSTIN– 19AABCD7720L1ZF), August 2017	Rs. 4,73,792.72/-
		9	M/s. Wacker Metroark Chemicals Pvt. Ltd (GSTIN-19AAACW2192G1Z8), October 2018	Rs. 38560.08/-
		10	SAI SULPHONATES PVT. LTD (GSTIN-19AAECS6573R1ZC), from July'17 to Feb'18	Rs. 1,21,65,548/-
3	**Reason**	Yet to be identified		
4	**Status**	Analysis in Progress		
5	**Financial Implications**	Total Interest waiver amount = Rs. 78103752.13/-		
6	**No. of Impacted Cases**	10		

3. Court Direction

13. Rectification of effective Date of Cancellation

#	Heading	Details
1	**Issue Summary**	Rectification of effective date of cancellation
2	**Issues Description**	M/s Outpace Marketing (GSTIN 07AAFFO8689N1Z9) had applied for cancellation of registration on 23.3.2021 and erroneously entered the effective date of cancellation as 20.3.2020 instead of 20.3.2021 as informed by the officer.
3	**Reason**	Through letter recd. from Additional Commissioner,CGST,East Delhi , it was informed that jurisdictional Officer has approved the rectification of effective date of cancellation from 20.3.20 to 20.3.21 to be done. This has been approved by Commissioner. The Commissioner has requested GSTN to rectify the effective date of Cancellation as per Hon`ble High Court of Delhi direction
4	**Status**	SDM # 754441 created for the data fix.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

14. Registration Migration Issue

#	Heading	Details
1	**Issue Summary**	M/s Swapnadip Enterprises had not received the Login credentials of the GST Portal for Provisional ID19AEAPG7710H1ZP. On account of non -receipt of Login credentials, the subsequent compliances including return filing were not completed by the taxpayer. The Hon'ble Calcutta High Court directed GSTN to examine the issue. Basis that Nodal Officer for Kolkata CGST Zone has submitted the matter before ITGRC to consider taxpayer's request for activating the GSTIN and providing login credentials.
2	**Issues Description**	On account of non-receipt of Login credentials, the subsequent compliances including return filing were not completed by the taxpayer
3	**Reason**	As per the business rules, such taxpayers were given deadlines to submit enrollment application. Since this taxpayer hadn't completed the process hence he cannot login from the username which is linked with PID.
4	**Status**	To be disposed off as per the directions of the Hon'ble court and subsequently, the recommendation by jurisdictional officer and directions given by GST Council.
5	**Financial Implications**	Yes. If he files all the pending returns, whether reversal of late fee and waiver of interest shall be permitted? Whether he can avail input tax credit Whether he can file TRAN-1, if required?
6	**No. of Impacted Cases**	1

15. Restoring APL 01 as per High Courts Remand back Order

#	Heading	Details
1	**Issue Summary**	Restoring APL 01 to submitted status as APL 04/02 has been remanded back by Hon`ble High Courts
2	**Issues Description**	Requests have been received from various states to enable Appellate authority to process APL 01 again where either Appeal orders APL 04 or APL 02 have been remand back by High Courts/Extension of time line by Supreme court.
3	**Reason**	Functionality is not available for remand back to Appellate authority. The remand back functionality is still under development, therefore, the disposed appeal order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted".
4	**Status**	Data fix provided and the Appeal application ARN was restore to "Appeal Submission" stage.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	48


THANK YOU!!
Goods And Services Tax Network

(b) Recommendations of the 19th meeting of the IT Grievance Redressal Committee:

Agenda: Recommendations of the 19th meeting of the IT Grievance Redressal Committee for approval/decision of the GST Council:

The 19th meeting of the IT Grievance Redressal Committee (ITGRC) was held on 27th April, 2023 at 11.00 AM in online mode 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 19th ITGRC meeting covered the following issues:

1. Technical Issues requiring data fixes through back-end utilities
2. Any other agenda with the permission of the chair

2. Recommendations of ITGRC on Data Fix issues :

As per the SOP approved in the 45th GST Council meeting for Technical issues requiring data fix of the processed incorrect data through backend utilities, GSTN presented twenty (20) issues which required data fixes for the consideration of ITGRC during its 19th meeting.

2.1 ITGRC took note of the data fixes carried out by GSTN in fifteen issues impacting 453 cases which were technical issues with no financial implication where correct data was known (Category-1 of the approved SOP) and deferred one (01) issue impacting 6 cases pertaining to the system allowing 'Nil' filing of GSTR-3B even if data has been auto populated from GSTR1 and there exists liability in GSTR-3B.

2.1.1 In the cases mentioned above in Category-1 (*Technical issues having no financial implications where correct data is known*), ITGRC also recommended that:

i) In cases where system was not allowing taxpayers to file refund due to technical defect because the invoice data had not got populated in the meta data table, GSTN would analyze how many such refund cases are pending due to error in validating the statement in refund and the amount involved therein by separating the active and inactive GSTINs.

ii) For cases where taxpayers are able to file GSTR-4 without clearing liabilities, GSTN would carry out data fix for all the past affected cases and bring before the next meeting of the ITGRC.

iii) In cases of double reporting of export invoices creating negative balance in the export ledger and non-transmission of invoices to ICEGATE for IGST refund, GSTN will intimate the jurisdictional officers to check the actual admissibility of refund and to check for double refund.

iv) The ITGRC recommended that an SOP needs to be developed in cases where the category of taxpayer (such as Normal/Composition) was to be converted with retrospective effect, and the same was to be referred to the Law Committee.

v) In cases where extension of time period has been granted for GST compliances,ITGRC has recommended that the issue be referred to the Law Committee for deliberation as to whether a

functionality needs to be developed and whether such issues can be considered individually by the Commissioners or the same needs to be referred to the Law Committee for the sake of uniformity across the States.

2.2 For the three (03) technical issues pertaining to Category-2 (*Technical issues where there were financial implications and the correct data was known*), ITGRC took note of the data fixes carried out by GSTN in all 39867 cases.

2.3 ITGRC also took note of the data fixes carried out by GSTN in 1 issue pertaining to 14 Court cases wherein the High Courts had remanded the appeal orders to the Appellate Authorities and GSTN had reset the status of the disposed appeal order to "Appeal Submitted".

The GST Council may approve the recommendations of the ITGRC and the data fixes carried out by GSTN as mentioned in Para 2 above and the attached Minutes of the 19th meeting of the ITGRC.

Minutes of the 19th Meeting of the IT Grievance Redressal Committee (ITGRC) held on 27.04.2023

The 19th meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 27th April, 2023 at 11 am. The list of officers who attended the meeting is attached as **Annexure-1**. The agenda and annexure to agenda circulated for the meeting is at **Annexure-2.**

2. Joint Secretary, GST Council Secretariat, welcomed all the members and informed that as per Circular 39/13/2018 dated 3.4.2018, ITGRC is mandated to resolve technical glitches being faced by class of taxpayers and that in the 45th meeting of the GST Council, an SOP on the mechanism to fix various technical glitches by the GSTN was approved. She also informed that the SOP categorized the technical glitches being faced by taxpayers according to the financial implications: those having no financial implications, local financial implications and those having global financial implications where either the correct data was known or not known. Data fixes for technical issues having no financial implications/ local financial implications where data was known with certainty were carried out after taking internal approval within GSTN and were being placed before the ITGRC for information/approval. She gave a brief introduction that the agenda shared by GSTN related to data fixes includes sixteen(16) kinds of cases having technical issues with no financial implication where correct data was known with certainty impacting 459 taxpayers which according to the SOP required approval of SVP, GSTN for GSTN to proceed with the data fixes required. She also stated that three (03) types of technical issues having local financial implications where the correct data was known impacting 39867 cases had been shared by GSTN as agenda for the 19th meeting which according to the SOP, required approval of EVP/CEO GSTN and MIS to be provided to tax administration. In addition to the two categories above, GSTN had also shared fourteen (14) court cases for consideration of the ITGRC. Thereafter Joint Secretary, GST Council Secretariat informed that Shri Dheeraj Rastogi, EVP, GSTN would be covering the agenda in detail. She then invited Shri Shashank Priya, Member, GST, CBIC to give his opening remarks.

3. Shri Shashank Priya, Chairman, ITGRC, thanked everyone for joining in the meeting and noted the presence of Shri Samir Vakil, Chief Commissioner, State Tax, Gujarat and Shri Khalid Anwar CCT, West Bengal. He requested that the members of ITGRC may make it convenient to join these ITGRC meetings and that representatives could attend whenever the members had other commitments. He then invited EVP, GSTN to proceed with the agenda.

4. Executive Vice President, GSTN stated that as informed by JS, GSTCS, GSTN has brought nineteen issues of technical glitches before ITGRC for which GSTN had to carry out data fixes.

5. EVP, GSTN then proceeded with the presentation **(Annexure-3)**. First the technical issues having no financial implications were taken up.

6(a) Technical issues having no financial implications where correct data known:

6(a).1

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
1	Meta Data Column missing in Invoice table of HBase. When Taxpayer was validating the statement in Refund, system was giving error "RF-FCAS1007" and not allowing to file the Refund for below two mentioned types: i. Refund on account of ITC accumulated due to Inverted Tax Structure ii. On account of supplies made to SEZ unit/ SEZ developer (without payment of tax).	22	GSTR-1	Description of error code: RF-FCAS1007: Something seems to have gone wrong while processing your request. Please try again. If error persists quote error number {0} when you contact customer care for quick resolution. Meta Data column was not present in "Invoice Detail" table. This was because we have noticed connection errors while inserting data to Invoice Detail table, due to which invoices went to error. By the data fix, invoices are enabled for validation so that the taxpayers can file refund application.	Code was fixed in production on 26th April 2022.Old cases are being fixed by backend query. Below are return periods for different taxpayers Sep 2019, Sep 2020, Apr, May, Jul, Sep, Oct, Dec 2021, Mar, May, Jun, Jul, Aug, Sep, Oct, Nov, Dec 2022, Jan 2023

Discussion:

Shri Nirmal Kumar, EVP(Technical), GSTN explained that due to technical defect the invoice data had not got populated in the meta data table. EVP GSTN said that such issues had arisen earlier and brought before the ITGRC. Chairman, ITGRC stated that the ITGRC would take note of the data fix. Chairman, ITGRC requested GSTN to analyze how many more such cases are pending and what the financial implications could be.

Joint Secretary, GST Council Secretariat pointed out that although the Status states that code had been fixed in production in April, 2022, data fixes were apparently required even for return periods subsequent to that. EVP, GSTN stated that the same would be analyzed.

Decision: ITGRC took note of the data fix done by the GSTN. As per the directions of the Chair, GSTN would analyze how many such cases are pending and the amount involved therein by separating the active and inactive GSTINs.

6(a).2

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
2	Taxpayers are able to file GSTR4 without clearing liabilities. The taxpayers were getting error while filing CMP-08 form "'ERROR!! Liability for previous tax period is yet to be paid'.	1	CMP-08	Transaction handling was not proper due to mix of Transaction Handling Manager/ Non Transaction Handling Manager transactions in GSTR-4. Due to this, in case of any failure rollback was not done completely from all the respective data sources. In this case, filing status has been updated as Fil in return filing status table w/o updating No in column Is Open of Return Liability Master ledger table besides the rollback of liability setoff entries in ledger. This is due to the fact that after filing of the quarterly GSTR-4 form, although ARN has been generated and it is being shown as FILED to the taxpayer, the posting in the ledger has been rolled partially back due to technical issue (Transaction Handling Manager/ Non Transaction Handling	Permanent fix already released to production on 14Jun'21 via ICR-12663. Old cases are being fixed by backend query. Return periods involved are 09/2017, 12/2017, 03/2018, 06/2018, 09/2018, 12/2018, 03/2019

				Manager).	

Discussion:

EVP, GSTN stated that the issue arose due to technical defect in the filing process of GSTR-4, where although the status was shown as filed, the debit to the ledger had not happened. This was corrected by way of data fix. It was informed that the same issue had been discussed in the 18th ITGRC. Chairman, ITGRC enquired whether such cases would also occur in the future. EVP GSTN stated that since issue has been fixed in production, only past cases would be resolved on the basis of tickets raised. Chairman ITGRC enquired whether the issue could be resolved for all the past cases. EVP(Tech) GSTN stated that the old cases could also be resolved by running a script and data fix could be done for all the past cases identified. CCT, West Bengal opined that the issue should be resolved for all the affected taxpayers. JS, GSTCS pointed out that as per SOP, similarly affected TPs had to be identified and the issue resolved for them. EVP, GSTN stated that the same would be done in future and they would fix all the past cases and bring it before the next meeting of the ITGRC.

Decision: The ITGRC took note of the data fix. Data fix to be done for all the past affected cases and brought before the next meeting of the ITGRC.

6(a).3

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
3	Correction in cash ledger balance due to credit/ debit happened simultaneously	80	Cash Ledger	Some tickets were received from taxpayers at GST Helpdesk for correction in Cash Ledger balance. Issue was identified as balance was not updated due to credit/ debit happening simultaneously. On further analysis, 80 cases were identified so far wherein either credit or debit entry was missed to update in Cash Ledger balance. The issue had occurred due to debit/ credit entry in the cash ledger happening at the same time, which led to incorrect cash balance in the cash ledger. The reason for occurrence of the issue is due to dirty read where the two transactions happened simultaneously and read the same record	CR#21982 has raised for permanent fix. Data are being fixed by backend query till code fix is done.

Discussion:

EVP, GSTN explained that there is a defect wherein if 2 transactions happen simultaneously on the cash ledger such as a debit and credit or 2 credits, then the balance in the cash ledger is not updated correctly. 88 such cases were identified by GSTN during examination wherein 80 were active GSTINs and 8 inactive. Representative from Tamil Nadu enquired whether these cases would fall under the category of technical issues having financial implications. EVP GSTN stated that since in these cases amount has already been paid and there is no financial implication for GST system therefore, these cases would come under the category of issues having no financial implications.

Decision: ITGRC took note of the data fixes done in 80 active cases wherein amount has been realized by way of challans but not reflected in cash ledger.

6(a).4

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
4	Taxpayers have raised ticket on Helpdesk regarding differences in data saved in HBase (seen in GSTR3B) and Ledger.	6	GSTR-3B	Taxpayers have filed the returns but there is mismatch in the data entered vis-à-vis payment made. Ledgers are updated on the basis of payment table whereas pdf is generated on the basis of data entered. This issue is because of 1.Nil filling is allowed even if user have auto populated data from GSTR1 2. Race condition due to which system is not able to verify if previous save is in in-progress state	RQM: 22721 has created for permanent fix. Data are being fixed by backend query till the permanent fix is done. Return periods are given below for different tax payers Mar 2018, Nov 2019, Aug 2022, Jan 2023

Discussion:

The issue here is of the system allowing 'Nil' filing of GSTR-3B even if data has been auto populated from GSTR1 and there exists liability in GSTR-3B. EVP, GSTN stated that they have done reset in 6 cases and after reset, tax payers have filed GSTR-3B. CCT, West Bengal stated that this appeared to be a deliberate attempt on the part of the TP to mis-declare his liability by making his outward supply 'Nil' and therefore, not a technical glitch to be deliberated upon by the ITGRC. Chairman, ITGRC concurred with the same and stated that this issue is not in the domain of ITGRC. However, the race condition in which TP attempts 2 saves of different liabilities but the second one is not updated with the ledger appears to be a technical glitch. Chairman, ITGRC enquired how many such technical glitches were identified.

EVP, GSTN stated that out of the 6 cases mentioned in the agenda, as on date, they do not have a break up of how many cases pertain to the race condition in the system due to which system is not able to verify if the previous save is in progress state and how many pertain to Nil filing of GSTR-

3B even when liability has been auto populated from GSTR1. He therefore, suggested that the agenda item may be withdrawn and GSTN be allowed to bring it up in the next ITGRC.

Chairman, ITGRC suggested that the Law Committee may be requested to have a relook into the issue of 'Nil' filing of GSTR-3B in cases where data has been auto populated from GSTR1.

CCT, West Bengal requested GSTN to develop MIS for all such cases where such Nil filing has been done as the jurisdictional officers would have to initiate recovery proceedings in such cases. EVP, GSTN stated that they have started analyzing the data and would shortly bring before the ITGRC a full list of such cases wherein there has been a mis-declaration of tax liability.

Decision : Deferred till next meeting of ITGRC. GSTN to provide MIS to jurisdictional tax officers for recovery in cases of under reporting of liabilities.

6(a).5

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
5	Rectification of rejected original record for already accepted amendment record.	1	GSTR-7	Deductor has amended the original record in favour of a different deductee, but the original record was not 'deferred' which is supposed to get defer. The status of Original record needs to be 'deferred' after it was amended. But it was not 'deferred' due to technical glitch allows R2X user to take action on that Original record.	Permanent fix is done. Old cases are being fixed by backend query. Return periods are Sep 2021 and Nov 2021

Discussion:

EVP, GSTN explained that this technical issue pertained to amendment in GSTR-7 wherein the original deductee's record was not shown as deferred which could potentially lead to him being able to take action on the same.Therefore, GSTN has carried out a data fix to correct the same. CCT, West Bengal requested GSTN to ensure that both the deductee's cash ledger was not credited on amendment by deductor. EVP, GSTN stated that this aspect had already been verified.

Decision: ITGRC took note of the data fix done by GSTN.

6(a).6

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
6	Transferring the cash balance available in the Temp ID. 232300000422ARD (Advance Ruling) to 332300000076TMP (Suo-moto Reg.) in the respective major/minor Heads. The amount has been incorrectly deposited by the taxpayer in the Temp ID meant for Advance Ruling.	1	Cash ledger	TN State Intelligence officer has wrongly created Temp ID (232300000422ARD) for a taxpayer Tvl. Vinsun Enterprises (GSTIN 23AASPJ8702E1ZR.) on front office (FO) portal through " Generate User ID for Unregistered applicant" instead of back office (BO) portal for making payment against the offence booked. The taxpayer also wrongly deposited a sum of Rs. 9,10,478/- using the temporary Id wrongly created on the FO portal. Subsequently the TN officer generated another Temp ID for Suo-moto registration (332300000076TMP) on BO portal and issued demand for Rs. 9,10,478/ in Form GST DRC-07-. Data correction was requested by Tamil Nadu team to transfer cash ledger balance from Temp. Id (Advance Ruling) to Temp If (Suo-	ICR 789175 has been raised to fix the issue from backend.

				motoReg) to enable the taxpayer to discharge the liability. This is a human error by - Tamil Nadu State Intelligence officer	

Discussion:

EVP, GSTN stated that this was a human error on the part of Tamil Nadu State Intelligence Officer wherein a Temp ID meant for Advance Ruling was wrongly got created from taxpayer instead of creating the Temp ID on suo- moto basis. The taxpayer wrongly deposited Rs. 9,10,478/- using this Temp ID. Since, no functionality exists for transfer from Temp ID for Advance Ruling to The Temp ID created on suo-moto basis, GSTN has done a data fix and transferred the amount. CCT, West Bengal enquired whether the amount that needs to be deposited for Advance Ruling can be kept as a cap for such Temp IDs for advance ruling. EVP, GSTN stated that they are now developing a functionality to ensure that no amount more than the fee for Advance Ruling can be deposited in Temp IDs for advance ruling.

Decision: ITGRC took note of the data fix done by GSTN.

6(a).7

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
7.	Status is suspended in GST Portal, whereas it is active in CBIC System	294	Registration	When the CBIC technical person, updating the status column in the registration database on 16th, 17th and 18thFebruary 2023, few of the old records in the table got initiated the Suo – Moto Cancellation task due to technical error and it was not initiated by CBIC officers and GSTINs got suspended. So far, CBIC has identified 294 cases which are active in the CBIC officer's dashboard and suspended in the GSTN portal. To resolve those cases, CBIC requested to verify and make the GSTINs as Active through data fix. This has happened due to technical issue at CBIC end.	Fixed by backend query.

Discussion: EVP, GSTN stated that due to some data load error at Wipro and CBIC end, 294 TPs who were active were shown as suspended in GSTN portal. At the request of CBIC, 294 GSTINs were made active by GSTN.

Decision: ITGRC took note of the data fix done by GSTN.

6(a).8

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
8.	Non-credit of Claimed amount after issuance of Deficiency memo by the Tax officer.	1	Refund	The taxpayer with the GSTIN 07AGJPS2553F2Z9 has filed refund application under the category "Refund of ITC on Export of Goods & Services without Payment of Tax". The officer has issued Deficiency memo. However, the claimed amount is not credited to the taxpayer. The amount involved in Rs 3,68,774/- On issuance of Deficiency memo, Case table has to be updated with DMI status and reversal credit entry has to be entered in Taxpayer's ledger. Only case table status is updated but ledger entry didn't happen.The functional call for ledger update is getting skipped due to logic issue in backend API call.	Data fix is given to credit the amount of Rs 3,68,774/-

Discussion: EVP, GSTN stated that due to technical issue, even after issuance of deficiency memo, amount claimed as refund was not credited to the electronic credit ledger of the TP and therefore, GSTN has done a data fix. Chairman ITGRC and CCT WB enquired whether in future for deficiency memos issued in case of refund claims, the amounts would be re-credited to the electronic credit ledger. EVP, GSTN stated that such a functionality already exists.

Decision: ITGRC took note of the data fix done by GSTN.

6(a).9

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
9.	Duplicate invoices (GSTR 1 & GSTR 1E) in the export table leading to negative balance in the Export ledger.	1	Refund	During the initial period of GST (July 2017 – September 2017), GSTR 1E was available for the taxpayers to report export invoices. Some taxpayers have reported the export invoices in GSTR 1E and the quarterly GSTR 1. This resulted in double reporting of export invoices. This double reporting created negative balance in the export ledger and the invoices are not transmitted to ICEGATE for IGST refund. For the impacted taxpayers, the export ledger will be given offset equivalent to invoice amount which was reported twice. This will make the export ledger either positive or zero for transmitted invoices to ICEGATE for IGST refund. The GSTINs which is given offset in export ledger is 07AAPPS0293J1Z6.	Rs. 18296.28 /- is given as offset in the export ledger.

Discussion: EVP, GSTN stated that during the initial period of GST (July 2017 – September 2017), GSTR 1E was available for the taxpayers to report export invoices. Some taxpayers have reported the export invoices in GSTR 1E and in the GSTR-1as well. This resulted in double reporting of export invoices. This double reporting created negative balance in the export ledger and the invoices are not transmitted to ICEGATE for IGST refund.

GSTN has given an offset in ledger of affected TP so that export invoices could be transmitted to ICEGATE. Representative from Haryana raised the issue of limitation for refund claim. EVP, GSTN stated that this delay was not due to any delay on the part of TP but due to system error and also that the issue of limitation of time cannot be discussed in ITGRC. Chairman, ITGRC stated that the issue of technical glitch was being discussed by ITGRC.

Decision: ITGRC took note of the data fix done by GSTN. The actual admissibility of refund would be decided by the jurisdictional officer. An intimation to be sent to jurisdictional officer so as to check double refund.

6(a).10

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
	Negative balance in Export	1	Refund	Taxpayers of Daman & Diu were given	Fixed

10.	ledger and the taxpayer not able to resolve the issue due to merger of Dadra Nagar Haveli with Daman & Diu. This resulted in non-transmission of export invoices to ICEGATE.			a new GSTINs with state code '26' and the GSTINs with state code '25' were disabled for filing any new forms. A taxpayer has a negative balance of Rs 436110 in the export ledger in the old GSTIN 25AAACW1018K1ZJ due to which export invoices are not getting transmitted to ICEGATE. The taxpayer is not having any GSTR 3B return to be filed in their old GSTIN. Therefore, there is no option available for taxpayer to pay the liability in the old GSTIN and make the export ledger as Zero/positive for transmission of invoices. In this case, the taxpayer was asked to pay the liability of old GSTIN of Rs436110/- through new GSTIN by filing DRC 03. The payment was made by the taxpayer. The export ledger of old GSTIN was given an offset equivalent to the amount of Rs436110. Now, invoices are transmitted to ICEGATE.	

Discussion: EVP, GSTN stated that a taxpayer of Daman and Diu had a negative balance in the export ledger in the GSTIN pertaining to old State code 25, therefore, their export invoices were not being transmitted to ICEGATE. And since TP had no further returns to be filed in the old GSTIN, therefore, there was no option available for taxpayer to pay the liability in the old GSTIN and make the export ledger as Zero/positive for transmission of invoices. GSTN therefore allowed the TP to pay the liability of old GSTIN in new GSTIN and offset the liability in the old GSTIN.

In this case, the taxpayer was asked to pay the liability of old GSTIN of Rs. 4,36,110/- through new GSTIN by filing DRC 03. The payment was made by the taxpayer. The export ledger of old GSTIN was given an offset equivalent to the amount of Rs436110. Now, invoices are transmitted to ICEGATE

Decision: ITGRC took note of the data fix.

6(a).11

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
11.	Rectification of Refund order (RFD 06)	2	Refund (Form GST RFD-06)	Representations are received from different states to reset the RFD 06 as RFD 06 has been issued with incorrect amount. In these cases, no payment advice is not	Issue is fixed

				issued by the tax officer. As the functionality for Rectification of RFD 06 is in documentation stage, RFD 06 was given a reset to enable the officer to issue RFD 06 one more time. The GSTINs which are involved in this reset are 27AACCL5620N1ZA, 02AAACB2894G1ZZ.	

Discussion: EVP GSTN stated that they had received requests to reset the RFD 06 as RFD 06 has been issued with incorrect amount. In these cases, no payment advice is issued by the tax officer. As the functionality for Rectification of RFD 06 is under development, RFD 06 was given a reset to enable the officer to issue RFD 06 one more time.

CCT, WB enquired whether such issues had also been raised earlier. EVP GSTN stated that earlier too a reset had been given to the officer to issue RFD 06 again.

Decision: ITGRC took note of the data fix carried out by GSTN.

6(a).12

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
12.	Tax Officers has issued Audit Notice (ADT-01) with incorrect Financial Year.	6	Audit	Officer has mistakenly selected incorrect values for Financial Year From, Financial Year To, Audit Period From, and Audit Period To While Issuing the "Notice For Conducting of Audit (ADT-01)". Now Officers want to Rectify the Issue. It was a human error where Tax officer has selected wrong values from dropdowns. For a permanent solution, a functionality is rolled out in production where officer can close the case and then start a fresh audit case (CR 22194).	As this was a human error so code fix was not required. Data were fixed by backend query.

Discussion: EVP, GSTN stated that sometimes officers mistakenly select incorrect values for Financial Year from, Financial Year drop down, Audit Period From, and Audit Period To while issuing notice for conducting of Audit. In order to rectify such errors, data fix was done.

For a permanent solution, a functionality is rolled out in production where officer can close the case and then start a fresh audit case.

Decision: ITGRC took note of the data fix carried out by GSTN.

6(a).13

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
	The state nodal officer of Uttar Pradesh has requested	1	Registration	For the GSTIN 9ACUPA8512D1ZM, The tax officer	Data is fixed

13.	to restore the registration from Normal taxpayer to Composition taxpayer from date-27-07-2022 as per the appellate order dated-27-07-2022.			has converted the category from Composition to Normal taxpayer. Against the Order issued by Registration officer, the taxpayer filed the appeal before the Appellate authority. The Appellate authority allowed the appeal filed by the taxpayer and ordered the department to convert the said GSTIN from Normal to Composition with retrospective effect (Date as 27/07/2022). No functionality is available to change from Normal to Composition with retrospective effect. Hence backend fix was required.	

Discussion: The tax officer has converted the category from Composition to Normal taxpayer. Against the Order issued by jurisdictional officer, the taxpayer filed the appeal before the Appellate authority. The Appellate authority allowed the appeal filed by the taxpayer and ordered the department to convert the said GSTIN from Normal to Composition with retrospective effect. Since functionality is not available to convert a TP from normal TP to Composition TP with retrospective effect, GSTN has done a backend data fix.

Chairman, ITGRC raised the issue that during the period that the TP was a normal TP he may have issued tax invoices and passed on credit. EVP, GSTN stated that the jurisdictional tax officer may be asked to verify this aspect. CCT, WB stated that a functionality might be developed to take care of future cases although for the present the data fix might be approved. Chairman, ITGRC suggested that the matter might be taken to the Law Committee to develop an SOP for the same.

Decision: Issue to be referred to Law Committee to develop an SOP for cases where taxpayer is converted from one category to another with retrospective effect.

6(a).14

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
	Taxpayer is not able to file Form GST CMP 02 for opting Composition levy scheme (CLS) as a trader of Tobacco products.	3	Registration	The taxpayers who register themselves as 'traders' in GST portal for dealing with Tobacco products, the portal doesn't allow such taxpayer from filing the Form GST CMP 02 to opt for CLS.	Data is fixed.

14.				CLS is restricted for the Manufacturers of goods like tobacco, ice creams, pan masala, ash bricks etc. GST system has a validation which limits the taxpayers who deals in such goods irrespective of the business activity of the Registered persons (Manufacturers, Traders, Wholesaler, Retailer etc.) to opt for CLS. This validation should have been kept only for the Manufacturers and not for the traders and others. A CR is given for modifying the validation.	

Discussion: EVP, GSTN stated that TPs are not able to file Form GST CMP 02 for opting for Composition levy scheme as trader of Tobacco products. Composition Levy is restricted for the Manufacturers of goods like tobacco, ice creams, pan masala, ash bricks etc. GST system has a validation which limits the taxpayers who deals in such goods irrespective of the business activity of the Registered persons (Manufacturers, Traders, Wholesaler, Retailer etc) to opt for CLS. This validation should have been kept only for the Manufacturers and not for the traders and others. Therefore, GSTN in these cases has enabled the option through backend and sent a mail to the jurisdictional tax authorities to verify whether they are traders or manufacturers. GSTN is working on keeping the validation only for manufacturers of such products.

Chairman, ITGRC enquired as to why this problem was not occurring with larger number of tax payers. EVP, GSTN stated that this might be due to the reason that many of such traders might be below threshold level or might be beyond the turnover for composition levy. And that many might be opting to be normal TPs.

Decision:ITGRC took note of the data fix done by the GSTN.

6(a).15

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
	Extension of the time limit for filing FORM GST ITC-01	1	ITC-01	Commissioner State Taxes Government of Jharkhand had issued a notification in Mar 2023 for extension of period for filing form ITC-01 to claim credit on the stock after moving out of composition scheme in favor of M/s Deepsons Auto center	Extension to ITC-01 for GSTIN were given on 14th Apr 2023.

15.				(20ADRPA2175N1ZJ). Earlier the tax payer had filed a writ petition before the Hon'ble High Court of Jharkhand. Hon'ble court has asked the tax payer to approach Commissioner SGST for redressal of grievances. Accordingly the due date have been extended to allow filing of the aforesaid form.	

Discussion: EVP, GSTN stated that in the case of M/s Deepsons Auto Center which missed the one month timeline in which ITC 01 had to be filed, Commissioner State Taxes Government of Jharkhand had issued a notification in March, 2023 for extension of period for filing form ITC-01, subsequent to High Court judgement. He said that the matter had been referred to GST Policy Wing for examination as to whether such extension can be given in individual cases, and if so, what should be the SOP. CCT, West Bengal concurred and said that the issue should be referred to Law Committee. He also stated that the Court had not asked the Department to extend the time period for filing of the form but had asked the Department to consider the representation of the taxpayer. Chairman, ITGRC agreed that the matter should be referred to the Law Committee. EVP, GSTN informed that because of the notification, Form ITC 01 was opened for the TP and he had filed. The matter has been referred to GST Policy Wing to take up the same with the Law Committee. The Chairman, ITGRC enquired as to why the issue has been brought before the ITGRC since the action is already over. He directed that such issues should be brought before ITGRC and approval taken before taking any action on the same. Representative from Haryana suggested that a functionality may be developed to enable the Commissioner to extend the time period. CCT, WB disagreed with the suggestion and stated that such issues should be brought before the Law Committee.

Decision: ITGRC took note of the data fix. Issue to be referred to the Law Committee for deliberation as to whether a functionality needs to be developed in such cases as the law allows for extension of time period and also whether such issues can be considered individually by the Commissioners or the same needs to be referred to the Law Committee for the sake of uniformity across the States. Such issues, if requiring the approval of ITGRC should first be brought before ITGRC for approval before implementation of the order.

6(a).16

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
16.	Reset of RFD 05 – Technical issue at CBIC	38	RFD 05	When the CBIC tax officer issues Payment advice (RFD 05) for the IGST refund applications auto generated by GST system, 'Zero' value is being received in GST system through G2G API. Due to these zero values,	Data fix will be given after peak filing (25.04.2023)

				these payment advices are not sent to PFMS for disbursement. These RFD 05s have to be given reset from the backend so that CBIC can resend the payload of RFD 05 through G2G API. In one case, to comply with the order of High court of Bombay, RFD 05 is loaded with the values received from field formation (cross verified with the values sent by DG systems) and sent to PFMS for disbursement.	

Discussion: EVP, GSTN stated that when RFD 05s are received in GST system through G2G API, some of the values are being received as zero. Since payment advice are being received with zero value, the same were not being forwarded to PFMS. Therefore, GSTN has done a reset in such cases to enable the correct amount to be resent again.

Decision: ITGRC took note of the data fix done by the GSTN.

6 (b). Thereafter, EVP, GSTN explained three cases where there were technical issues affecting locally with financial implications and where the correct data was known.

The details of the cases are mentioned as follows:

6 (b).1

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
			GSTR-3B	As per the Notification No. 50/2017 Central Tax Dated 24 Oct 2017, late fee of GSTR3B for return period August, September 2017 was required to be waived off for all taxpayers. Late Fee was charged for taxpayer with GSTIN id - 08AJLPJ6421E1ZB for August, 2017 and September 2017 but it was not refunded for	Refund of late fee had been given as per the Notification No. 50/2017 Central Tax Dated 24 Oct 2017 and not due to defect. Return periods

1.	Reversal of late fee in GSTR-3B form	1		him. Taxpayer has raised a ticket to provide the refund for the late fee paid by him for August and September 2017 return periods. While extracting the list of taxpayers who had paid late fee on delayed filing of return in Form GSTR-3B for the months of August and September, 2017 for refunding the same, somehow, the complainant was missed from the list and no late fee was refunded to the said taxpayer. Refund of late fee of Rs.6400/-(Rs.3200/- in CGST and Rs. 3200/- in SGST)	involved are August, September 2017.

Discussion: EVP, GSTN stated that late fee of GSTR3B for return period August, September 2017 was waived off for all taxpayers. Late Fee was charged for a taxpayer for August,2017 and September 2017 but it was not refunded to him. A ticket has been raised by the TP and refund is due to him. Chairman, ITGRC enquired whether the refund had already been given or whether the issue is being brought to ITGRC for approval. EVP, GSTN stated that the refund had already been given. CCT, WB enquired as to why the issue has been brought before ITGRC as the notification for waiver of late fee and refund where paid already exists. EVP, GSTN stated that all data fixes were being brought before the ITGRC.

Decision:ITGRC took note of the data fix done by the GSTN.

6 (b).2

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
	Correction of Decimal values in Credit Ledger			Taxpayer is unable to utilize amount of Rs. 0.5 under CGST & SGST tax heads of credit ledger, As we are not showing the decimal values on the UI for ITC .There are 39864 taxpayers for whom the values in the ITC ledger are in decimals. The decimal values need to be rounded off to nearest rupee.	Data fix has done by backend query.

2.		39864	Credit Ledger	• Where amount is greater than or equal to 50 paise, the same will be upward rounded off and if the amount is less than 50 paise, the same will be downward rounded off. • The net financial impact is Rs 1630.54/ (CGST: Rs. 847.68/-, SGST: Rs. 764.2/-, IGST: Rs. 19.71/- and CESS: Rs. 1.05/-)	

Discussion: EVP, GSTN stated that there were some decimal values in the Credit Ledger of certain TPs because of which they were unable to offset their returns due to mismatch. Therefore, GSTN had rounded these off to the nearest rupee. He stated that the net financial impact is Rs.1630/- and 39864 were the number of impacted cases. Chairman, ITGRC enquired whether such issues are expected to recur in future. EVP, GSTN stated that such issues are not expected to arise in future.

Decision:ITGRC took note of the data fixes done by the GSTN.

6 (b).3

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
3.	Taxpayers have filed return in Form GSTR-4 (Annual) without entering outward supplies in table 6	2	GSTR-04	Taxpayers have filed return in Form GSTR-4 (Annual) without entering outward supplies in table 6 and due to which amount paid through CMP-08s have been credited to the Negative Liability Statement which can be utilised for future liability. Though, amount from the statement was nullified but few case were missed out. Taxpayers have filed return in Form GSTR-4 (Annual) without entering outward supplies in table 6 and due to which, amount paid through CMP-08s was credited negative liability statement. Now,	Permanent fix is deployed to production via CR – 21592 on 31-03-2022.

				taxpayers are requesting to correct the same. Recovery to be done. Total amount to be recovered = 1,19,816 /-. Taxpayer 1 -> 26110 CGST + 26110 SGST(Total=52220/-) Taxpayer 2 -> 33798 CGST + 33798 SGST(Total=67596/-)	

Discussion: EVP, GSTN stated thatsome taxpayers have filed return in Form GSTR-4 (Annual) without entering outward supplies in table 6 and due to which amount paid through CMP-08s have been credited to the Negative Liability Statement. These TPs had utilized the amount for future liability and had raised tickets to recover the amount. CCT, WB stated that there might be more such cases. EVP, GSTN stated that the issue had been deliberated earlier in the Law Committee and a list of such TPs had been sent to jurisdictional Tax Officers to examine whether any amount is recoverable. He also stated that now a check has been put in place whereby if any amount has been paid during the year then Table-6 needs to be necessarily filled in without which the return would not be allowed to be filed.

Decision: ITGRC took note of the data fixes done by the GSTN.

6(c) Court Cases:

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
1	2	3	4	5	6
1.	Reverting APL 01 to submitted status as APL 04/02 has been remanded back by Hon`ble High Courts.	14	Appeal APL 01	Requests have been received from various states to enable Appellate authority to restore APL 01 where either Appeal orders APL 04 or APL 02 have been remanded back by High Courts of different States. Functionality is not available for remand back to Appellate authority. The remand back functionality is still under development, therefore, the disposed appeal order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted".	Data fix provided and the Appeal application ARNs were restored to "Appeal Submission" stage.

Discussion: EVP, GSTN stated that High Courts of different States have remanded back various appeal orders to Appellate Authorities. Since the remand Functionality is not available for remand back to Appellate authority, appeal order has been given reset from the status of "Appeal disposed" to "Appeal Submitted". He stated that the functionality is expected to be in production by next month.

Decision: ITGRC took note of the data fixes done by the GSTN.

To summarize, 20 issues including court cases were presented by GSTN for the consideration of ITGRC during its 19th meeting.

Sixteen issues impacting 459 cases where there were technical issues with no financial implication and where data was known were presented by GSTN which involved issues like taxpayers not being able to file refunds due to reasons such as Meta Data Column missing in Invoice table of Hbase, human errors such as wrongly creating temp ID for Advance Ruling instead of creating it on suo-moto basis by tax officer etc. ITGRC took note of the data fixes in 453 cases and deferred 1 issue impacting 6 cases.

Three technical issues affecting locally with financial implications and where the correct data was known were thereafter discussed impacting 39867 cases. ITGRC took note of the data fixes carried out by GSTN in all these cases.

ITGRC also took note of the data fixes carried out by GSTN in 14 Court cases wherein High Courts had remanded the appeal orders back to Appellate Authorities.

Thereafter, Chairman, ITGRC thanked everyone for their time and also mentioned that one of the members, Pr. Chief Commissioner, Delhi CT Zone, Ms. Mallika Arya was superannuating soon and wished her all the very best.

Annexure-1

Centre:

i. Member (GST), CBIC – Sh. Shashank Priya (Chairman, ITGRC)
ii. Pr. Chief Commissioner, CGST, Delhi Zone – Ms. Mallika Arya
iii. DG, Systems CBIC, New Delhi– Dr. Sandeep Srivastava

States:

i. Chief Commissioner, State Tax, Gujarat – Sh. Samir Vakil
ii. Commissioner, State Tax, West Bengal – Sh. Khalid Aizaz Anwar
iii. Additional Excise & Taxation Commissioner, Haryana – Sh. Siddharth Jain
iv. Joint Commissioner (IT), State Tax, Tamil Nadu – Sh.Rasal Doss Solomon J.

GST Council Secretariat:

i. Additional Secretary, GSTCS- Sh. Pankaj Kumar Singh
ii. Joint Secretary, GSTCS- Ms. Ashima Bansal
iii. Joint Secretary, GSTCS- Ms. B. Sumidaa Devi

Special Invitees:

i. Executive Vice President, GSTN- Sh. DheerajRastogi
ii. Executive Vice President, GSTN- Sh. Nirmal Kumar

Annexure-2

Agenda on Data Fix issues

Technical Issues Requiring Data Fix of the Processed Incorrect Data through Backend Utilities

The changes in GST law / Rules, the representations received from taxpayers and other stakeholders require alterations to be continuously made in the GST System. GSTN has therefore adopted an agile methodology of developing applications for GST System keeping it modular to handle frequent changes in law and rules incorporated in a running application. This has necessitated integrating all new application changes downstream being dependent on the module undergoing the change and led to following concerns:

- Some corner scenarios owing to varying taxpayer actions and system behaviour, when subjected to heavy load, go unhandled leading to inconsistent data persisting in GST System.
- The data inconsistencies vary from ledger getting improper debits/credits, the return details stored in the system having incorrect information relating to situations where an irreversible commit has happened in the database.
- No option available to taxpayer to seek remedy in GST System leading to a need of performing data fixes through auditable utilities.

These issues generally have been noticed after

- A complaint is raised by taxpayer/ tax officer
- Result of a periodic internal and external audits.

In order to resolve these issues, the processed incorrect data requires fixing, collecting correct data besides solving the software/platform issues being faced by respective stakeholders. Accordingly, GSTN has initiated fixing of technical issues identified, as per the SOP approved by the ITGRC in the15thmeetingheld on 12/08/2021, which is as below:

x. Analysis of data discrepancy.

xi. Confirmation of discrepancy sought from MSP.

xii. Upon confirmation, utility to be created by MSP to extract similar cases from GST System data.

xiii. A root cause analysis conducted to fix the issue and implemented by MSP in consultation with GSTN to rectify data inconsistency.

xiv. Scripts created for data fix and tested in multiple cycles by MSP and GSTN.

xv. Approval note presented to competent authority to fix the issue.

xvi. After approval, audit entries created for each change affecting the data.

xvii. Scripts executed and post execution state of data stored for reference later.

xviii. List of all such changes to be presented and explained to GST policy wing & ITGRC and periodic internal audit also to be undertaken.

Data Fix cases are accordingly presented to ITGRC for deliberations and decision as mentioned in the attached Annexure.

Annexure

Technical Issues Requiring Data Fixes through Backend Utility (Period -04thFeb 2023 to 31st Mar 2023)

Cases Requiring Internal Approval of SVP, EVP/CEO or Post facto Approval of ITGRC									
S. No.	**Issue reported**	**Approved By**	**Date of Approval**	**No. of Cases Impacted**	**Financial Implication**	**Module**	**Correct Data Known / Not Known**	**Detail Description**	**Status**
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
Cases having no financial implications									
1	Meta Data Column missing in Invoice table of HBase. When Taxpayer was validating the statement in Refund, system was giving error "RF-FCAS1007" and not allowing to file the Refund for below two mentioned types: iii. Refund on account of ITC accumulated due to Inverted Tax Structure iv. On account of supplies made to SEZ unit/	EVP (Services)	22.02.2023	22	No	GSTR-1	Known	Description of error code: RF-FCAS1007: Something seems to have gone wrong while processing your request. Please try again. If error persists quote error number {0} when you contact customer care for quick resolution. Meta Data column was not present in "Invoice Detail" table. This was because we have noticed connection errors while inserting data to	Code was fixed in production on 26thApril 2022.Old cases are being fixed by backend query. Return periods involved are Below are return periods for different taxpayersSep 2019, Sep 2020, Apr, May, Jul, Sep, Oct, Dec 2021, Mar, May, Jun, Jul, Aug, Sep, Oct, Nov, Dec 2022,

	SEZ developer (without payment of tax).							Invoice Detail table, due to which invoices went to error. By the data fix, invoices are enabled for validation so that the taxpayers can file refund application.	Jan 2023
2	Taxpayers are able to file GSTR4 without clearing liabilities.The taxpayers were getting error while filing CMP-08 form "'ERROR!! Liability for previous tax period is yet to be paid'.	EVP (Services)	24.02.2023	1	No	CMP-08	Known	Transaction handling was not proper due to mix of Transaction Handling Manager/ Non Transaction Handling Manager transactions in GSTR-4. Due to this, in case of any failure rollback was not done completely from all the respective data sources. In this case, filing status has been updated as Fil in return filing status table w/o updating No in column Is Open of Return Liability Master ledger table besides the rollback of liability setoff entries in ledger. This is due to the fact that after filing of the quarterly GSTR-4 form, although ARN has been generated and it is being shown as FILED to the taxpayer, the posting in the ledger has been rolled partially back due to technical issue	Permanent fix already released to production on 14Jun'21 via ICR-12663. Old cases are being fixed by backend query. Return periods involved are 09/2017, 12/2017, 03/2018, 06/2018, 09/2018, 12/2018, 03/2019

								(Transaction Handling Manager/ Non Transaction Handling Manager).	
3	Correction in cash ledger balance due to credit/ debit happened simultaneously	EVP (Services)	06.03.2023	80	No	Cash Ledger	Known	Some tickets were received from taxpayers at GST Helpdesk for correction in Cash Ledger balance. Issue was identified as balance was not updated due to credit/ debit happening simultaneously. On further analysis, 80 cases were identified so far wherein either credit or debit entry was missed to update in Cash Ledger balance. The issue had occurred due to debit/ credit entry in the cash ledger happening at the same time, which led to incorrect cash balance in the cash ledger. The reason for occurrence of the issue is due to dirty read where the two transactions happened simultaneously and read the same record	CR#21982 has raised for permanent fix. Data are being fixed by backend query till code fix is done.
4	Taxpayers have raised ticket on Helpdesk regarding differences in data saved in HBase (seen in GSTR3B) and Ledger.	EVP (Services)	24.03.2023	6	No	GSTR-3B	Known	Taxpayers have filed the returns but there is mismatch in the data entered vis-à-vis payment made.Ledgers are updated on the basis of payment table	RQM: 22721 has created for permanent fix.Data are being fixed by backend query till the

								whereas pdf is generated on the basis of data entered.This issue is because of 1.Nil filling is allowed even if user have auto populated data from GSTR1 2. Race condition due to which system is not able to verify if previous save is in in-progress state.	permanent fix is done. Return periods are given below for different tax payers Mar 2018, Nov 2019, Aug 2022, Jan 2023
5	Rectification of rejected original record for already accepted amendment record.	EVP (Services)	24.03.2023	1	No	GSTR-7	Known	Deductor has amended the original record in favour of a different deductee, but the original record was not 'deferred' which is supposed to get defer. The status of Original record needs to be 'deferred' after it was amended. But it was not 'deferred' due to technical glitchallows R2X user to take action on that Original record.	Permanent fix is done. Old cases are being fixed by backend query.Return periods are Sep 2021 and Nov 2021
6	Transferring the cash balance available in the Temp ID. 232300000422ARD (Advance Ruling) to 332300000076TMP (Suo-moto Reg.) in the respective major/minor Heads. The amount has been incorrectly deposited by the taxpayer in the	EVP (Services)	31.03.2023	1	No	Cash Ledger	Known	TN State Intelligence officer has wrongly created Temp ID (232300000422ARD) for a taxpayer Tvl. Vinsun Enterprises (GSTIN 23AASPJ8702E1ZR.) on front office (FO) portal through " Generate User ID for Unregistered applicant" instead of back office	ICR 789175 has been raised to fix the issue from backend.

	Temp ID meant for Advance Ruling.							(BO) portal for making payment against the offence booked. The taxpayer also wrongly deposited a sum of Rs. 9,10,478/- using the temporary Id wrongly created on the FO portal. Subsequently the TN officer generated another Temp ID for Suo-moto registration (332300000076TMP) on BO portal and issued demand for Rs. 9,10,478/ in Form GST DRC-07-. Data correction was requested by Tamil Nadu team to transfer cash ledger balance from Temp. Id (Advance Ruling) to Temp If (Suo-motoReg) to enable the taxpayer to discharge the liability. This is a human error by - Tamil Nadu State Intelligence officer	
7	Status is suspended in GST Portal, whereas it is active in CBIC System	EVP (Services)	20.03.2023	294	No	Registration	Known	When the CBIC technical person, updating the status column in the registration database on 16th, 17th and 18thFebruary 2023, few of the old records in the table got initiated the	Fixed by backend query.

								Suo – Moto Cancellation task due to technical error and it was not initiated by CBIC officers and GSTINs got suspended. So far, CBIC has identified 294 cases which are active in the CBIC officer's dashboard and suspended in the GSTN portal. To resolve those cases, CBIC requested to verify and make the GSTINs as Active through data fix. This has happened due to technical issue at CBIC end.	
8	Non-credit of Claimed amount after issuance of Deficiency memo by the Tax officer.	EVP (Services)	11.02.2023	1	No	Refund	Known	The taxpayer with the GSTIN 07AGJPS2553F2Z9 has filed refund application under the category "Refund of ITC on Export of Goods & Services without Payment of Tax". The officer has issued Deficiency memo. However, the claimed amount is not credited to the taxpayer. The amount involved in Rs 3,68,774/- On issuance of Deficiency memo, Case table has to be updated with DMI	Data fix is given to credit the amount of Rs 3,68,774/-

								status and reversal credit entry has to be entered in Taxpayer's ledger. Only case table status is updated but ledger entry didn't happen.The functional call for ledger update is getting skipped due to logic issue in backend API call.	
9	Duplicate invoices (GSTR 1 & GSTR 1E) in the export table leading to negative balance in the Export ledger.	EVP (Services)	Different dates	1	No	Refund	Known	During the initial period of GST (July 2017 – September 2017), GSTR 1E was available for the taxpayers to report export invoices. Some taxpayers have reported the export invoices in GSTR 1E and the quarterly GSTR 1. This resulted in double reporting of export invoices. This double reporting created negative balance in the export ledger and the invoices are not transmitted to ICEGATE for IGST refund. For the impacted taxpayers, the export ledger will be given offset equivalent to invoice amount which was reported twice. This will make the export ledger either positive or zero for transmitted invoices to ICEGATE for IGST	Rs. 18296.28 /- is given as offset in the export ledger.

								refund.The GSTINs which is given offset in export ledger is 07AAPPS0293J1Z6.	
10	Negative balance in Export ledger and the taxpayer not able to resolve the issue due to merger of Dadra Nagar Haveli with Daman & Diu. This resulted in non-transmission of export invoices to ICEGATE.	EVP (Services)	22-02-2023	1	No	Refund	Known	Taxpayers of Daman & Diu were given a new GSTINs with state code '26' and the GSTINs with state code '25' were disabled for filing any new forms. A taxpayer has a negative balance of Rs. 436110 in the export ledger in the old GSTIN 25AAACW1018K1ZJ due to which export invoices are not getting transmitted to ICEGATE. The taxpayer is not having any GSTR 3B return to be filed in their old GSTIN. Therefore, there is no option available for taxpayer to pay the liability in the old GSTIN and make the export ledger as Zero/positive for transmission of invoices. In this case, the taxpayer was asked to pay the liability of old GSTIN of Rs436110/- through new GSTIN by filing DRC 03. The payment was made by the taxpayer. The	Fixed

								export ledger of old GSTIN was given an offset equivalent to the amount of Rs436110. Now, invoices are transmitted to ICEGATE.	
11	Rectification of Refund order (RFD 06)	EVP (Services)	Different dates	2	No.	Refund (Form GST RFD-06)	Known	Representations are received from different states to reset the RFD 06 as RFD 06 has been issued with incorrect amount. In these cases, no payment advice is not issued by the tax officer. As the functionality for Rectification of RFD 06 is in documentation stage, RFD 06 was given a reset to enable the officer to issue RFD 06 one more time. The GSTINs which are involved in this reset are 27AACCL5620N1ZA, 02AAACB2894G1ZZ.	Issue is fixed
12	Tax Officers has issued Audit Notice(ADT-01) with incorrect Financial Year.	EVP (Services)	24.02.2023	6	No	Audit	Known	Officers has mistakenly selected incorrect values for Financial Year From, Financial Year To, Audit Period From, and Audit Period To While Issuing the "Notice For Conducting of Audit (ADT-01)". Now Officers wants to Rectify the Issue. It	As this was a human error so code fix was not required. Data were fixed by backend query.

								was a human error where Tax officer has selected wrong values from dropdowns. For a permanent solution, a functionality is rolled out in production where officer can close the case and then start a fresh audit case (CR 22194).	
13	The state nodal officer of Uttar Pradesh has requested to restore the registration from Normal taxpayer to Composition taxpayer from date-27-07-2022 as per the appellate order dated-27-07-2022.	SVP (Services)	25.02.2023	1	No	Registration	Known	For the GSTIN 9ACUPA8512D1ZM, The tax officer has converted the category from Composition to Normal taxpayer. Against the Order issued by Registration officer, the taxpayer filed the appeal before the Appellate authority. The Appellate authority allowed the appeal filed by the taxpayer and ordered the department to convert the said GSTIN from Normal to Composition with retrospective effect (Date as 27/07/2022). No functionality is available to change from Normal to Composition with retrospective effect. Hence backend fix was required.	Data is fixed

14	Taxpayer is not able to file Form GST CMP 02 for opting Composition levy scheme (CLS) as a trader of Tobacco products.	EVP (Services)	01.04.2023	3	No	Registration	Known	The taxpayers who register themselves as 'traders' in GST portal for dealing with Tobacco products, the portal doesn't allow such taxpayer from filing the Form GST CMP 02 to opt for CLS. CLS is restricted for the Manufacturers of goods like tobacco, ice creams, pan masala, ash bricks etc. GST system has a validation which limits the taxpayers who deals in such goods irrespective of the business activity of the Registered persons (Manufacturers, Traders, Wholesaler, Retailer etc) to opt for CLS. This validation should have been kept only for the Manufacturers and not for the traders and others. A CR is given for modifying the validation.	Data is fixed.

15	Extension of the time limit for filing FORM GST ITC-01	EVP (Services)	Different dates	1	No	ITC-01	Known	Commissioner State Taxes Government of Jharkhand had issued a notification in Mar 2023 for extension of period for filing form ITC-01 to claim credit on the stock after moving out of composition scheme in favor of M/s Deepsons Auto center (20ADRPA2175N1ZJ). Earlier the tax payer had filled a writ petition before the Hon'ble High Court of Jharkhand. Hon'ble court has asked the tax payer to approach Commissioner SGST for redressal of grievances. Accordingly the due date have been extended to allow filing of the aforesaid form.	Extension to ITC-01 for GSTIN were given on 14th Apr 2023.
16	Reset of RFD 05 – Technical issue at CBIC	EVP(Services)	21.04.2023	38	No	RFD05	Known	When the CBIC tax officer issues Payment advice (RFD 05) for the IGST refund applications auto-generated by GST system, 'Zero' value is being received in GST system through G2G API. Due to these zero values, these payment advices are not sent to PFMS for disbursement. These RFD 05s have to be given reset from the backend so that CBIC	Data fix will be given after peak filing (25.04.2023)

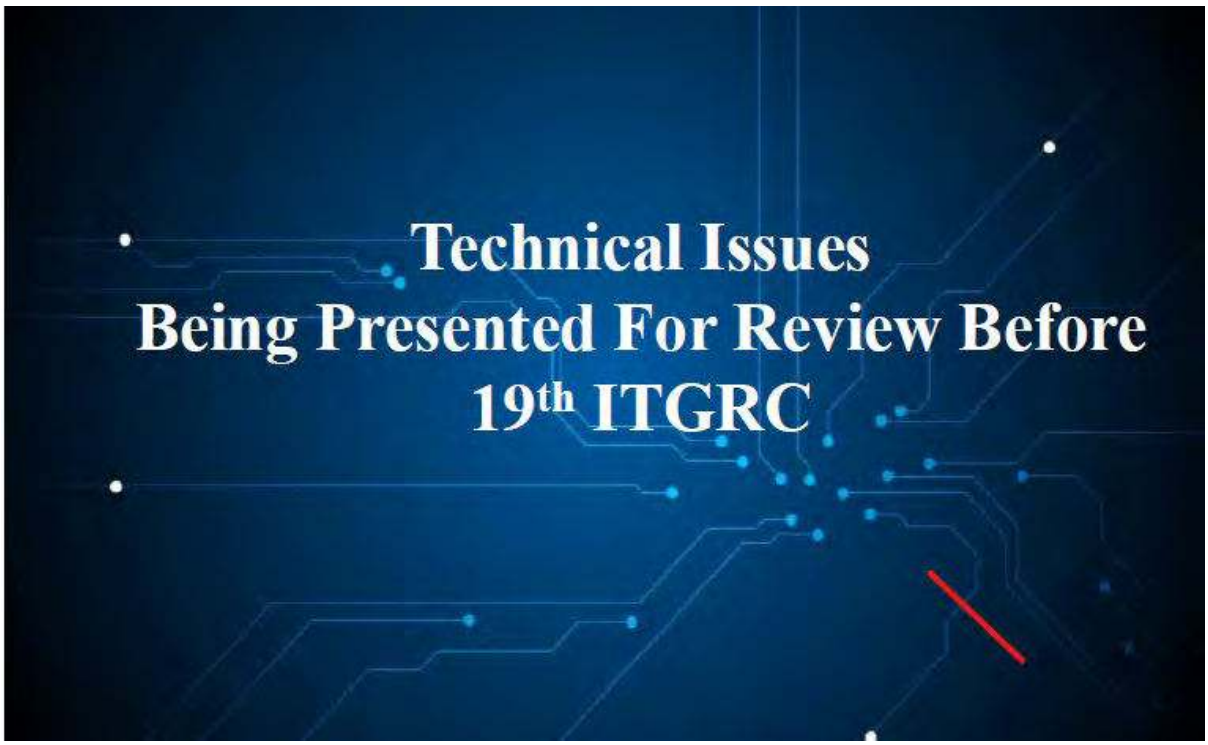
								can resend the payload of RFD 05 through G2G API. In one case, to comply with the order of High court of Bombay, RFD 05 is loaded with the values received from field formation (cross verified with the values sent by DG systems) and sent to PFMS for disbursement.	
Cases having Financial Implications:									
1	Reversal of late fee in GSTR-3B form	EVP (Services)	22.02.2023	1	Yes	GSTR-3B	Known	As per the Notification No. 50/2017 Central Tax Dated 24 Oct 2017, late fee of GSTR3B for return period August, September 2017 was required to be waived off for all taxpayers. Late Fee was charged for taxpayer with GSTIN id - 08AJLPJ6421E1ZB for August,2017 and September 2017 but it was not refunded for him. Taxpayer has raised a ticket to provide the refund for the late fee paid by him for August and September 2017 return periods. While extracting the list of taxpayers who had paid late fee on delayed filing of return	Refund of late fee had given as per the Notification No. 50/2017 Central Tax Dated 24 Oct 2017 and not due to defect. Return periods involved are August, September 2017.

								in Form GSTR-3B for the months of August and September, 2017 for refunding the same, somehow, the complainant was missed from the list and no late fee was refunded to the said taxpayer. Refund of late fee of Rs.6400/-(Rs.3200/- in CGST and Rs. 3200/- in SGST)	
2	Correction of Decimal values in Credit Ledger	EVP (Services)	06.03.2023	39864	Yes	Credit Ledger	Known	Taxpayer is unable to utilize amount of Rs. 0.5 under CGST & SGST tax heads of credit ledger, As we are not showing the decimal values on the UI for ITC .There are 39864 taxpayers for whom the values in the ITC ledger are in decimals. The decimal values need to be rounded off to nearest rupee. • Where amount is greater than or equal to 50 paise, the same will be upward rounded off and if the amount is less than 50 paise, the same will be downward rounded off. • The net financial impact is Rs	Data fix has done by backend query.

								1630.54/ (CGST: Rs. 847.68/-, SGST: Rs. 764.2/-, IGST: Rs. 19.71/- and CESS: Rs. 1.05/-)	
3	Taxpayers have filed return in Form GSTR-4 (Annual) without entering outward supplies in table 6	EVP (Services)	27.03.2023	2	Yes	GSTR-04	Known	Taxpayers have filed return in Form GSTR-4 (Annual) without entering outward supplies in table 6 and due to which amount paid through CMP-08s have been credited to the Negative Liability Statement which can be utilised for future liability. Though, amount from the statement was nullified but few case were missed out.Taxpayers have filed return in Form GSTR-4 (Annual) without entering outward supplies in table 6 and due to which, amount paid through CMP-08s was credited negative liability statement. Now, taxpayers are requesting to correct the same.Recovery to be done.Total amount to be recovered = 1,19,816 /-. Taxpayer 1 -> 26110 CGST + 26110 SGST(Total=52220/-) Taxpayer 2 -> 33798 CGST + 33798 SGST(Total=67596/-)	Permanent fix is deployed to production via CR – 21592 on 31-03-2022.

Court Cases:									
1	Reverting APL 01 to submitted status as APL 04/02 has been remanded back by Hon`ble High Courts	EVP (Services)	Different dates	14	No	Appeal APL01	Known	Requests have been received from various states to enable Appellate authority to restore APL 01 where either Appeal orders APL 04 or APL 02 have been remanded back by High Courts of different States.Functionality is not available for remand back to Appellate authority. The remand back functionality is still under development, therefore, the disposed appeal order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted".	Data fix provided and the Appeal application ARNswereresto red to "Appeal Submission" stage.

Annexure-3



S. No.	Types of Issues	Count
1	Technical issue with no financial Implications – Correct data known	16 (Slide No. 4 to 19)
2	Technical issue affecting locally with financial implications – Correct data known	3 (Slide No. 21 to 23)
3	Court Direction	1 (Slide No. 25)

1. Technical Issue With No Financial Implications – Correct Data Known

1. Meta Data Column missing in Invoice table of HBase

#	Heading	Details
1	Issue Summary	When Taxpayer was validating the statement in Refund, system was giving error "RF-FCAS1007" and not allowing to file the Refund for below two mentioned type: 1. Refund on account of ITC accumulated due to Inverted Tax Structure 2. On account of supplies made to SEZ unit/ SEZ developer (without payment of tax).
2	Issues Description	Description of error code: RF-FCAS1007: Something seems to have gone wrong while processing your request. Please try again. If error persists quote error number {0} when you contact customer care for quick resolution.
3	Reason	Meta Data column was not present in "Invoice Detail" table. This was because we have noticed connection errors while inserting data to Invoice Detail table, due to which invoices went to error.
4	Status	Code was fixed in production on 26th April 2022. Old cases are being fixed by backend query. This issue is reported in 18th ITGRC meeting and it was approved.
5	Financial Implications	No
6	No. of Impacted Cases	22

2. Issue in filing CMP-08

#	Heading	Details
1	Issue Summary	The taxpayers were getting error while filing CMP-08 form "ERROR!! Liability for previous tax period is yet to be paid'.
2	Issues Description	Transaction handling was not proper due to mix of Transaction Handling Manager/ Non Transaction Handling Manager in GSTR-4. Due to this, in case of any failure rollback was not done completely from all the respective data sources. In this case, filing status has been updated as Fil in return filing status table w/o updating No in column Is Open of Return Liability Master ledger table besides the rollback of liability setoff entries in ledger.
3	Reason	This is due to the fact that after filing of the quarterly GSTR-4 form, although ARN has been generated and it is being shown as FILED to the taxpayer, the posting in the ledger has been rolled partially back due to technical issue (Transaction Handling Manager/ Non Transaction Handling Manager).
4	Status	Permanent fix already released to production on 14th Jun'21 via ICR-12663. Old cases are being fixed by backend query. This issue is reported in 18th ITGRC meeting and it was approved.
5	Financial Implications	No
6	No. of Impacted Cases	1

3. Correction in Cash Ledger balance

#	Heading	Details
1	Issue Summary	Correction in cash ledger balance due to credit/ debit happened simultaneously
2	Issues Description	Some tickets were received from taxpayers at GST Helpdesk for correction in Cash Ledger balance. Issue was identified as balance was not updated due to credit/ debit happening simultaneously. For the period between Jul 2017 to Nov 2022, 88 cases were identified so far wherein the credit entry was missing in the Cash Ledger balance. Among the 88 cases, 80 cases belongs to active taxpayers involving amount of Rs. 1624035/-. No case is identified for missing debit entry.
3	Reason	The reason for occurrence of the issue is due to dirty read where the two transactions happened simultaneously and read the same record.
4	Status	Data are being fixed for 80 cases involving amount of Rs. 1624035/-. CR#21982 has raised for permanent fix. This issue is reported in 17th ITGRC meeting and it was approved.
5	Financial Implications	No
6	No. of Impacted Cases	80

4. Mismatch between H-base and ledger data

#	Heading	Details
1	Issue Summary	Taxpayers have raised ticket on Helpdesk regarding differences in data saved in HBase (seen in GSTR3B) and Ledger.
2	Issues Description	Taxpayers have filed the returns but there is mismatch in the data entered vis-à-vis payment made. Ledgers are updated on the basis of payment table whereas pdf is generated on the basis of data entered.
3	Reason	1.Nil filling is allowed even if user have auto populated data from GSTR1 2. Race condition due to which system is not able to verify if previous save is in in-progress state.
4	Status	RQM: 22721 has created and yet to prioritize for development. Data are being fixed by backend query till the permanent fix is done.
5	Financial Implications	No
6	No. of Impacted Cases	6

5. Rectification of rejected original record in GSTR-7

#	Heading	Details
1	Issue Summary	Deductor has amended the original record in favour of a different deductee, but the original record was not 'deferred' which is supposed to get defer.
2	Issues Description	The status of Original record needs to be 'deferred' after it was amended. But it was not deferred due to technical glitch.
3	Reason	Due to technical glitch the status of Original record which needs to be 'deferred' after amendment was not deferred and allows R2X user to take action on that Original record.
4	Status	It was fixed in production on 26th Jan 2022 via RQM 22154 and ICR 15230. Old cases are being fixed by backend query. This issue is reported in 18th ITGRC meeting and it was approved.
5	Financial Implications	No
6	No. of Impacted Cases	1

6. Transfer the cash balance available in the Advance Ruling to Suo-moto Reg.

#	Heading	Details
1	Issue Summary	Transfer the cash balance available in the Temp ID. 232300000422ARD (Advance Ruling) to 332300000076TMP (Suo-moto Reg.) in the respective major/minor Heads
2	Issues Description	TN State Intelligence officer has wrongly created Temp ID (232300000422ARD) for a taxpayer M/s Vinsun Enterprises (GSTIN 23AASPJ8702E1ZR.) on front office (FO) portal through " Generate User ID for Unregistered applicant" instead of back office (BO) portal for making payment against the offence booked. The taxpayer also wrongly deposited a sum of Rs. 9,10,478/- using the temporary Id wrongly created on the FO portal. Subsequently the TN officer generated another Temp ID for Suo-moto registration (332300000076TMP) on BO portal and issued demand for Rs. 9,10,478/ in Form GST DRC-07. Neither the tax officer nor the taxpayer not able to set off the amount which was already deposited through the wrong Temp ID created on the FO portal against the demand. Data correction requested, to transfer cash ledger balance from Temp. Id (Advance Ruling) to Temp If (Suo-moto Reg) so as to set off the demand through Form GST DRC-03 by taxpayer or adjusted through BO by Tax officer.
3	Reason	Human error by - Tamil Nadu State Intelligence officer
4	Status	Data fix provided.
5	Financial Implications	No
6	No. of Impacted Cases	1

7. Technical issue at CBIC end

#	Heading	Details
1	Issue Summary	Status is suspended in GST Portal, whereas it is active in CBIC System
2	Issues Description	When the CBIC technical person, updating the status column in the registration database on 16th, 17th and 18th February 2023, few of the old records in the table got initiated the Suo – Moto Cancellation task due to technical error and it was not initiated by CBIC officers and GSTINs got suspended. So far, CBIC has identified 294 cases which are active in the CBIC officer's dashboard and suspended in the GSTN portal. To resolve those cases, CBIC requested to verify and make the GSTINs as Active through data fix.
3	Reason	This has happened due to technical issue at CBIC end.
4	Status	Fixed by backend query.
5	Financial Implications	No
6	No. of Impacted Cases	294

8. RFD-01 : Non credit of claimed amount

#	Heading	Details
1	Issue Summary	The taxpayer with the GSTIN 07AGJPS2553F2Z9 has filed refund application under the category "Refund of ITC on Export of Goods & Services without Payment of Tax". The officer has issued Deficiency memo. However, the claimed amount is not credited to the taxpayer. The amount involved in Rs 3,68,774/-
2	Issues Description	After issuance of Deficiency memo by the tax officer, the claimed amount is not credited back to the electronic credit ledger of the tax payer. Data fix is given to re-credit the amount of Rs 3,68,774/-
3	Reason	On issuance of Deficiency memo, Case table has to be updated with DMI status and reversal credit entry has to be entered in Taxpayer's ledger. Only case table status is updated but ledger entry didn't happen. The functional call for ledger update is getting skipped due to logic issue in backend API call.
4	Status	Issue is fixed.
5	Financial Implications	No
6	No. of Impacted Cases	1

9. Duplicate Invoice issue – GSTR-1E & GSTR 1

#	Heading	Details
1	Issue Summary	During the initial period of GST (July 2017 – September 2017), GSTR 1E was available for the taxpayers to report export invoices. Some taxpayers have reported the export invoices in GSTR 1E and the quarterly GSTR 1. This resulted in double reporting of export invoices. This double reporting created negative balance in the export ledger and the invoices are not transmitted to ICEGATE for IGST refund.
2	Issues Description	For the impacted taxpayers, the export ledger will be given offset equivalent to invoice amount which was reported twice. This will make the export ledger either positive or zero for transmitted invoices to ICEGATE for IGST refund. The GSTIN which is given offset in export ledger is 07AAPPS0293J1Z6
3	Reason	Due to technical issue, some export invoices which were reported in GSTR-1E of August 2017 were reflected twice when the taxpayer has opted for quarterly return filing in September, 2017.
4	Status	Data fix provided.
5	Financial Implications	No
6	No. of Impacted Cases	1

10. Issue due to merging of DNH and Daman & Diu

#	Heading	Details
1	Issue Summary	Taxpayers of Daman & Diu were given a new GSTINs with state code '26' and the GSTINs with state code '25' were disabled for filing any new forms. A taxpayer has a negative balance of Rs. 436110/- in the export ledger in the old GSTIN 25AAACW1018K1ZJ due to which export invoices are not getting transmitted to ICEGATE. The taxpayer is not having any GSTR 3B return to be filed in their old GSTIN. Therefore, there is no option available for taxpayer to pay the liability in the old GSTIN and make the export ledger as Zero/positive for transmission of invoices.
2	Issues Description	In this case, the taxpayer was asked to pay the liability of old GSTIN of Rs 436110/- through new GSTIN by filing DRC 03. The payment was made by the taxpayer. The export ledger of old GSTIN was given an offset equivalent to the amount of Rs 436110. Now, invoices are transmitted to ICEGATE.
3	Reason	Since the state code was changed after Daman & Diu merger, the earlier GSTIN got cancelled. And for the taxpayers where export ledger has been negative, export invoices were not getting transmitted to ICEGATE.
4	Status	Data fix provided.
5	Financial Implications	No
6	No. of Impacted Cases	1

11. Rectification issues in RFD 06

#	Heading	Details
1	Issue Summary	Representations are received from different states to reset the RFD 06 as RFD 06 has been issued with incorrect amount. In these cases, no payment advice is issued by the tax officer.
2	Issues Description	As the functionality for Rectification of RFD 06 is in documentation stage, RFD 06 was given a reset to enable the officer to issue RFD 06 one more time. The GSTINs which are involved in this reset are 27AACCL5620N1ZA, 02AAACB2894G1ZZ.
3	Reason	The tax officer has committed mistake while passing RFD-06 order, and in absence of rectification facility on GST portal, reset has to be given.
4	Status	Issue is fixed.
5	Financial Implications	No
6	No. of Impacted Cases	2

12. Notice For Conducting of Audit (ADT-01)

#	Heading	Details
1	Issue Summary	Tax Officers has issued Notice with incorrect Financial Year. It was raised by Tax officers from multiple states (Himachal Pradesh, Andhra Pradesh, Uttar Pradesh, Odisha, Jammu and Kashmir).
2	Issues Description	Officers has mistakenly selected incorrect values for Financial Year From , Financial Year To , Audit Period From , and Audit Period To While Issuing the "Notice For Conducting of Audit(ADT-01)". Now Officers wants to Rectify the Issue.
3	Reason	It was an human error where Tax officer has selected wrong values from dropdowns.
4	Status	As this was an human error so code fix was not required. Data were fixed by backend query.
5	Financial Implications	No
6	No. of Impacted Cases	6

13. Change a GSTIN from Normal to Composition category

#	Heading	Details
1	Issue Summary	Restore the registration from Normal taxpayer to Composition taxpayer from date-27-07-2022 as per the appellate order dated-27-07-2022.
2	Issues Description	For the GSTIN 9ACUPA8512D1ZM, The tax officer has converted the category from Composition to Normal taxpayer. Against the Order issued by Registration officer, the taxpayer filed the appeal before the Appellate authority. The Appellate authority allowed the appeal filed by the taxpayer and ordered the department to convert the said GSTIN from Normal to Composition with retrospective effect (Date as 27/07/2022).
3	Reason	No functionality is available for the tax officers to change a registration type from Normal to Composition with retrospective effect. The state nodal officer has requested for changing the registration type. Hence backend fix was provided.
4	Status	Data was fixed.
5	Financial Implications	No
6	No. of Impacted Cases	1

14. Validation in filing Form GST CMP 02

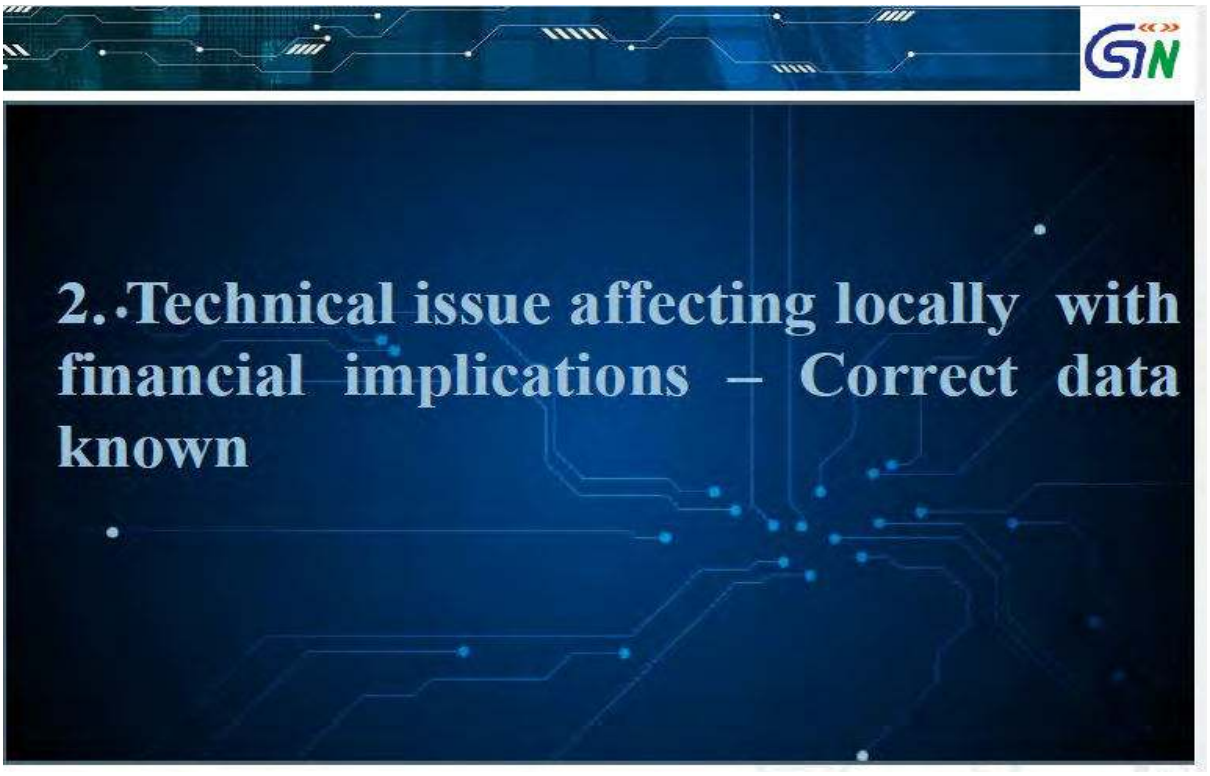
#	Heading	Details
1	Issue Summary	Taxpayer is not able to file Form GST CMP 02 for opting Composition levy scheme (CLS) as a trader of Tobacco products.
2	Issues Description	The taxpayers who register themselves as 'traders' in GST portal for dealing with Tobacco products, the portal doesn't allow such taxpayer from filing the Form GST CMP 02 to opt for CLS.
3	Reason	CLS is restricted for the Manufacturers of goods like tobacco, ice creams, pan masala, ash bricks etc. GST system has a validation which limits the taxpayers who deals in such goods irrespective of the business activity of the Registered persons (Manufacturers, Traders, Wholesaler, Retailer etc) to opt for CLS. This validation should have been kept only for the Manufacturers and not for the traders and others. A CR is given for modifying the validation. For the already impacted cases, solution is provided through back end fix. This issue is taken up based on grievance ticket raised by taxpayer.
4	Status	Data fix has been done.
5	Financial Implications	No
6	No. of Impacted Cases	3

15. Extension of dates for filing GST ITC-01

#	Heading	Details
1	Issue Summary	Extension of the time limit for filing FORM GST ITC-01
2	Issues Description	Commissioner State Taxes Government of Jharkhand had issued a notification in Mar 2023 for extension of period for filing form ITC-01 to claim credit on the stock after moving out of composition scheme in favor of M/s Deepsons Auto center (20ADRPA2175N1ZJ). Earlier the tax payer had filled a writ petition before the Hon'ble High Court of Jharkhand. Hon'ble court has asked the tax payer to approach Commissioner SGST for redressal of grievances. Accordingly the due date have been extended to allow filing of the aforesaid form.
3	Reason	Based on the notification issued by State Commissioner, the extension was provided for the tax payer.
4	Status	Extension to ITC-01 for GSTIN were given on 14th Apr 2023.
5	Financial Implications	No
6	No. of Impacted Cases	1

16. Reset of RFD 05 – Technical issue at CBIC

#	Heading	Details
1	Issue Summary	RFD 05 Payloads received from CBIC has 'zero' value instead of Sanctioned amount
2	Issues Description	When the CBIC tax officer issues Payment advice (RFD 05) for the IGST refund applications autogenerated by GST system, 'Zero' value is being received in GST system through G2G API. Due to these zero values, these payment advices are not sent to PFMS for disbursement. These RFD 05s have to be given reset from the backend so that CBIC can resend the payload of RFD 05 through G2G API. In one case, to comply with the order of High court of Bombay, RFD 05 is loaded with the values received from field formation (cross verified with the values sent by DG systems) and sent to PFMS for disbursement.
3	Reason	Zero value is being sent by CBIC
4	Status	Data fix will be given after peak filing (25.04.2023)
5	Financial Implications	No
6	No. of Impacted Cases	37+1



1. Reversal of late fee in GSTR-3B form

#	Heading	Details
1	Issue Summary	Late fee of GSTR3B for return period August, September 2017.
2	Issues Description	As per the Notification No. 50/2017 Central Tax Dated 24 Oct 2017, late fee of GSTR3B for return period August, September 2017 was required to be waived off for all taxpayers. Late Fee was charged for taxpayer with GSTIN id - 08AJLPJ6421E1ZB for August,2017 and September 2017 but it was not refunded for him. Taxpayer has raised a ticket to provide the refund for the late fee paid by him for August and September 2017 return periods.
3	Reason	While extracting the list of taxpayers who had paid late fee on delayed filing of return in Form GSTR-3B for the months of August and September, 2017 for refunding the same, somehow, the complainant was missed from the list and no late fee was refunded to the said taxpayer.
4	Status	Refund of late fee had given as per the Notification No. 50/2017 Central Tax Dated 24 Oct 2017 and not due to defect.
5	Financial Implications	Yes, Refund of late fee of Rs.6400/-(Rs.3200/- in CGST and Rs. 3200/- in SGST)
6	No. of Impacted Cases	1

2. Correction in Credit Ledger

#	Heading	Details
1	Issue Summary	Correction of Decimal values in Credit Ledger
2	Issues Description	Taxpayer is unable to utilize amount of Rs. 0.5 under CGST & SGST tax heads of credit ledger, As we are not showing the decimal values on the UI for ITC .There are 39864 taxpayers for whom the values in the ITC ledger are in decimals. The decimal values need to be rounded off to nearest rupee. I. Where amount is greater than or equal to 50 paise, the same will be upward rounded off and if the amount is less than 50 paise, the same will be downward rounded off. II. The net financial impact is Rs 1630/
3	Reason	During the initial phase of GST implementation, debit in credit ledger was allowed in decimal values also while later, it was restricted to whole number for all transactions. IGST amounts were corrected in credit ledger but CGST, SGST, IGST & CESS heads still have decimal values for few taxpayer ledgers.
4	Status	Data fix has been done.
5	Financial Implications	Yes, Rs.1630.54/- tax head of credit ledger (CGST: Rs. 847.68/-, SGST: Rs. 764.2/-, IGST: Rs. 19.71/- and CESS: Rs. 1.05/-)
6	No. of Impacted Cases	39864

3. Filed GSTR-4 (Annual) without entering outward supplies in table 6

#	Heading	Details
1	Issue Summary	Taxpayers have filed return in Form GSTR-4 (Annual) without entering outward supplies in table 6.
2	Issues Description	Taxpayers have filed return in Form GSTR-4 (Annual) without entering outward supplies in table 6 and due to which amount paid through CMP-08s have been credited to the Negative Liability Statement which can be utilized for future liability. Though, amount from the statement was nullified but few case were missed out.
3	Reason	Due to non-filling up of table 6 of GSTR-4 (annual), the tax liability paid through CMP-08 of the financial year becomes excess tax paid and credited to negative liability statement. The tax payer had utilized the amount for filing future period CMP-08 out of the negative liability statement. While doing recovery exercise, few tax payers were missed out due to defect in the system application. These two tax payers have raised the ticket to recover the amount and accordingly the amount was debited to the cash ledger.
4	Status	Permanent fix is deployed to production via CR – 21592 on 31-03-2022.
5	Financial Implications	Yes, recovery has been done. Total amount recovered = Rs. 1,19,816 /- Taxpayer 1 -> Rs. 26110 /- CGST + Rs. 26110 /- SGST (Total=52220/-) Taxpayer 2 -> Rs. 33798 /- CGST + Rs. 33798 /- SGST (Total=67596/-)
6	No. of Impacted Cases	2

3. Court Direction

1. Reset of APL-02/APL-04 orders.

#	Heading	Details
1	Issue Summary	Reverting APL 01 to submitted status as APL 04/02 has been remanded back by Hon`ble High Courts
2	Issues Description	Requests have been received from various states to enable Appellate authority to restore APL 01 where either Appeal orders APL 04 or APL 02 have been remanded back by High Courts of different States. Functionality is not available for remand back to Appellate authority. The remand back functionality is still under development, therefore, the disposed appeal order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted".
3	Reason	High Court Directions
4	Status	Appeal application ARNs were restored to "Appeal Submission" stage. This issue is reported in 18th ITGRC meeting and it was approved.
5	Financial Implications	No
6	No. of Impacted Cases	14

Agenda Item 7: Scheme of Budgetary Support under GST regime in lieu of earlier Excise duty exemption schemes to eligible manufacturing units under different Industrial Promotion Schemes of the Government of India.

Industrial units located in the Himalayan and North Eastern States have been seeking implementation of a mechanism for reimbursement of balance 42% of the Central Goods and Services Tax ("CGST") and 21% of the Integrated Goods and Services Tax ("IGST") paid by them in cash along with appropriate interest in addition to 58% of net CGST and 29% net IGST being reimbursed by the Central Government under the Scheme of budgetary support brought out by Department for Promotion of Industry and Internal Trade in October, 2017. In this regard, several Writ Petitions were filed in the Hon'ble Supreme Court of India and the High Courts of various States challenging the Notification F. No. 10(1)/2017-DBA-II/NER dated 05.10.2017 (enclosed as **Annexure-A**) issued by the Department for Promotion of Industry and Internal Trade on the grounds that the Government had replaced the incentive available to the industrial units under the erstwhile indirect tax regime viz. exemption from 100% of output central excise duty liability was replaced with and limited to reimbursement of 58% of net CGST and 29% net IGST paid in cash by the eligible manufacturing units after utilizing the credit available. The units had made heavy investments in the States based on different Industrial Promotion Schemes of the Government of India as effectuated by Central Excise Notification Nos. 49 and 50/2003 dated 10.06.2003 and Notification No. 20/2007 dated 25.04.2007.

2. The Hon'ble Supreme Court vide judgement dated 17.10.2022 (enclosed as **Annexure-B as a separate booklet**) in CA No. 7405/2022 [Arising out of SLP (Civil) No. 12397 of 2020] filed by M/s Hero Motocorp Ltd on the issue held that the appellant's claim based on promissory estoppel was without substance. Though the appellants might not have a claim in law, the Court found that they did have a legitimate expectation that their claim deserved due consideration and further gave the following directions: -

"*79. It is further to be noted that the GST Council is a constitutional body. It has powers to make recommendations on wide-ranging issues concerning GST, including grant of exemptions from the GST. It also has power to make recommendations with regard to special provisions governing North Eastern and Himalayan States. Taking into consideration that the units like the appellants have been established in the Himalayan and North-Eastern States based on the said O.M. of 2003 and that lakhs of persons are employed in such industries, we are of the view that it will be appropriate that such States should also consider to correspondingly reimburse such units out of the share of revenue received by them through devolution from the Central Government. We further find that it will also be appropriate that the GST Council considers making appropriate recommendations to the States in that regard.*

80. We, therefore, permit the appellants to make representations to the respective State Governments as well as to the GST Council. We also request the State Governments and the GST Council to consider such representations, if made, in accordance with what has been observed herein above in an expeditious manner."

3. Various High Courts including Hon'ble Delhi High Court vide order dated 22.11.2022 in W.P. (C) 11103/2019 in the matter of M/s Cavendish Industries Limited, Hon'ble High Court of Meghalaya vide order dated 15.11.2022 in W.P. (C) 165/2019 in the matter of M/s Star Cement Ltd., W.P. (C) 166/2019 in the matter of M/s Star Cement Meghalaya Ltd. and W. P. (C) 384/2019 in the matter of M/s

Dalmia Cement (Bharat) Limited and Hon'ble High Court of Gauhati vide order dated 31.10.2022 in W.P. (C) 2208/2019 in the matter of M/s Star Cement Ltd. (Guwahati Grinding Unit) have relied upon the above cited judgement of the Hon'ble Supreme Court and allowed the petitioners to make representations to the GST Council and the States.

4. In view of directions given by the Hon'ble Supreme Court and High Courts, various representations have been received wherein GST Council has been requested to devise an appropriate mechanism and direct the State Governments to reimburse balance 42% of the CGST and 21% of IGST paid by them during the eligible period along with applicable interest in order to make the projects located in Himalayan and North Eastern states economically viable.

5. In this regard, it is pertinent to mention that the said issue was discussed in the 2nd GST Council meeting held on 30.09.2016 wherein it was observed that once existing tax incentive schemes were withdrawn, the taxes paid would be accounted for in the Consolidated Fund of India and 42% of the amount would be devolved to the States. The Centre, therefore, could be expected to only reimburse the units out of the remaining 58% of the fund which was not part of the devolution and the States would also need to correspondingly reimburse such units out of the share of revenue received through devolution and the Council approved the following: -

> *"(i) All entities exempted from payment of indirect tax under any existing tax incentive scheme shall pay tax in the GST regime.*
>
> *(ii) The decision to continue with any incentive given to specific industries in existing industrial policies of States or through any schemes of the Central Government, shall be with the concerned State or Central Government.*
>
> *(iii) In case the State or Central Government decides to continue any existing exemption/incentive/deferral scheme, then it shall be administered by way of a reimbursement mechanism through the budgetary route, the modalities for which shall be worked out by the concerned State/Centre."*

6. The Ministry of Commerce & Industry, Department for Promotion of Industry and Internal Trade subsequently notified the Scheme of Budgetary Support vide F. No. 10(1)/2017-DBA-II/NER dated 05.10.2017 for reimbursing 58% of Central Tax paid through debit in cash ledger after utilizing input tax credit of Central Tax and Integrated Tax and 29% of net IGST in lieu of earlier 100% excise duty exemption available to units located in the States of Jammu and Kashmir (now UT of Jammu and Kashmir and UT of Ladakh), Uttarakhand, Himachal Pradesh and North East including Sikkim.

7. The current position of reimbursement of balance 42% of net CGST and 21% net IGST by the eleven states covered under the Scheme of budgetary support is as follows:

S.No.	State	Whether reimbursing balance 42% CGST	Whether reimbursing balance 21% IGST
1	Jammu and Kashmir	Yes	No
2	Himachal Pradesh	No	No
3	Uttarakhand	No	No

4	Arunachal Pradesh	No	No
5	Assam	No	No
6	Manipur	No	No
7	Meghalaya	No	No
8	Mizoram	No	No
9	Nagaland	No	No
10	Sikkim	No	No
11	Tripura	No	No

8. As approved in the 2nd GST Council Meeting, the decision on incentivizing the units by way of reimbursement through budgetary support lies with the concerned State or Central Government. In this regard, views were sought from the States concerned and comments have been received from the State of Uttarakhand and Meghalaya regarding reimbursement of balance 42% CGST & 21% IGST wherein they have expressed that GST revenue growth of the States was not satisfactory and that substantial portion of tax collected from the State is moving out in the form of IGST. Further, the States are also implementing their own industrial policy and have undertaken several policy measures and incentives in favour of industries including those which were eligible for drawing benefits under the earlier Excise duty exemption. Therefore, the State Governments are not in a position to reimburse the remaining portion of CGST/IGST.

9. However, keeping in view the directions given by Hon'ble Supreme Court vide its judgement dated 17.10.2022 and further directions given by Hon'ble High Court of Delhi, Meghalaya and Gauhati, the issue is placed before the GST Council for further deliberation and consideration.

Annexure-A

**[TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY PART-I, SECTION-I]**

MINISTRY OF COMMERCE & INDUSTRY

DEPARTMENT OF INDUSTRIAL POLICY & PROMOTION

NOTIFICATION

New Delhi, the 5th October, 2017

Subject: Scheme of budgetary support under Goods and Service Tax Regime to the units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim.

F. No. 10(1)/2017-DBA-II/NER -In pursuance of the decision of the Government of India to provide budgetary support to the existing eligible manufacturing units operating in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim under different Industrial Promotion Schemes of the Government of India, for a residual period for which each of the units is eligible, a new scheme is being introduced. The new scheme is offered, as a measure of goodwill, only to the units which were eligible for drawing benefits under the earlier excise duty exemption/refund schemes but has otherwise no relation to the erstwhile schemes.

1.2 Units which were eligible under the erstwhile Schemes and were in operation through exemption notifications issued by the Department of Revenue in the Ministry of Finance, as listed under para 2 below would be considered eligible under this scheme. All such notifications have ceased to apply w.e.f. 01.07.2017 and stands rescinded on 18.07.2017 vide notification no. 21/2017 dated 18.07.2017. The scheme shall be limited to the tax which accrues to the Central Government under Central Goods and Service Act, 2017 and Integrated Goods and Services Act, 2017, after devolution of the Central tax or the Integrated tax to the States, in terms of Article 270 of the Constitution.

2. The erstwhile Schemes which were in operation on 18.07.2017 were as follows:

2.1 **Jammu & Kashmir**- Notification nos. 56/2002-CE dated 14.11.2002, 57/2002-CE dated
14.11.2002 and 01/2010-CE dated 06.02.2010 as amended from time to time;

2.2 **Himachal Pradesh & Uttarakhand**- Notification nos. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 10.06.2003 as amended from time to time;

2.3 **North East States including Sikkim-** Notification no 20/2007-CE dated 25.04.2007 as amended from time to time.

3. SHORT TITLE AND COMMENCEMENT

3.1 The scheme shall be called Scheme of Budgetary Support under Goods and Services Tax (GST) Regime to the units located in State of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim. The said Scheme shall come into operation w.e.f. 01.07.2017 for an eligible unit (as defined in para 4.1) and shall remain in operation for residual period (as defined in para 4.3) for each of the eligible unit in respect of specified goods (as defined in para 4.2). The overall scheme shall be valid upto 30.06.2027.

3.2 OBJECTIVE:

The GST Council in its meeting held on 30.09.2016 had noted that exemption from payment of indirect tax under any existing tax incentive scheme of Central or State Governments shall not continue under the GST regime and the concerned units shall be required to pay tax in the GST regime. The Council left it to the discretion of Central and State Governments to notify schemes of budgetary support to such units. Accordingly, the Central Government in recognition of the hardships arising due to withdrawal of above exemption notifications has decided that it would provide budgetary support to the eligible units for the residual period by way of part reimbursement of the Goods and Services Tax, paid by the unit limited to the Central Government's share of CGST and/or IGST retained after devolution of a part of these taxes to the States.

4. DEFINITIONS

4.1 'Eligible unit' means a unit which was eligible before 1st day of July, 2017 to avail the benefit of ab-initio exemption or exemption by way of refund from payment of central excise duty under notifications, as the case may be, issued in this regard, listed in para 2 above and was availing the said exemption immediately before 1st day of July, 2017. The eligibility of the unit shall be on the basis of application filed for budgetary support under this scheme with reference to:

(a) Central Excise registration number, for the premises of the eligible manufacturing unit, as it existed prior to migration to GST; or

(b) GST registration for the premises as a place of business, where manufacturing activity under exemption notification no. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 10.06.2003 were being carried prior to 01.07.2017 and the unit was not registered under Central Excise.

4.2 'Specified goods' means the goods specified under exemption notifications, listed in paragraph 2, which were eligible for exemption under the said notifications, and which were being manufactured and cleared by the eligible unit by availing the benefit of excise duty exemption, from:

(a) The premises under Central Excise with a registration number, as it existed prior to migration to GST; or

(b) The manufacturing premises registered in GST as a place of business from where the said goods under exemption notification no. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 10.06.2003 were being cleared

4.3 'Residual period' means the remaining period out of the total period not exceeding ten years, from the date of commencement of commercial production, as specified under the relevant notification listed in paragraph 2, during which the eligible unit would have been eligible to avail exemption for the specified goods. The documentary evidence regarding date of commercial production shall be submitted in terms of para 5.7.

5. DETERMINATION OF THE AMOUNT OF BUDGETARY SUPPORT 5.1 The amount of budgetary support under the scheme for specified goods manufactured by the eligible unit shall be sum total of –

(i) 58% of the Central tax paid through debit in the cash ledger account maintained by the unit in terms of sub-section(1) of section 49 the Central Goods and Services Act, 2017 after utilization of the Input tax credit of the Central Tax and Integrated Tax.

(ii) 29% of the integrated tax paid through debit in the cash ledger account maintained by the unit in terms of section 20 of the Integrated Goods and Services Act, 2017 after utilization of the Input tax credit Tax of the Central Tax and Integrated Tax.

Provided where inputs are procured from a registered person operating under the Composition Scheme under Section 10 of the Central Goods and Services Act, 2017 the amount i.e. sum total of (i) & (ii) above shall be reduced by the same percentage as is the percentage value of inputs procured under Composition scheme out of total value of inputs procured.

Explanation:-

Explanation-I

a	Sum total worked out under clause (i) & (ii)	Rs.200
b	Percentage value of inputs procured under Composition Scheme out of total value of inputs procured	20%
c	Admissible amount out of (a) above	Rs(200-20% of 200) = Rs.160

Explanation- II

(a) Calculation of (ii) shall be followed by calculation of (i)

(b) To avail benefit of this scheme, eligible unit shall first utilize input tax credit of Central tax and Integrated tax and balance of liability, if any, shall be paid in cash and where this condition is not fulfilled, the reimbursement sanctioning officer shall reduce the amount of budgetary support payable to the extent credit of Central tax and integrated tax, is not utilized for payment of tax.

5.2 The above 58% has been fixed taking into consideration that at present Central Government devolves 42% of the taxes on goods and services to the States as per the recommendation of the 14th Finance Commission.

5.3 Notwithstanding, the rescinding of the exemption notifications listed under para 2 above, the limitations, conditions and prohibitions under the respective notifications issued by Department

of Revenue as they existed immediately before 01.07.2017 would continue to be applicable under this scheme. However, the provisions relating to facility of determination of special rate under the respective exemption notifications would not apply under this scheme.

5.4 Budgetary support under this scheme shall be worked out on quarterly basis for which claims shall be filed on a quarterly basis namely for January to March, April to June, July to September & October to December.

5.5 Any unit which is found on investigation to over-state its production or make any misdeclaration to claim budgetary support would be made in-eligible for the residual period and be liable to recovery of excess budgetary support paid. Activity relating to concealment of input tax credit, purchase of inputs from unregistered suppliers (unless specifically exempt from GST registration) or routing of third party production or other activities aimed at enhancing the amount of budgetary support by mis-declaration would be treated as fraudulent activity and, without prejudice to any other action under law may invite denial of benefit under the scheme ab-initio. The units will have to declare total procurement of inputs from unregistered suppliers and from suppliers working under Composition Scheme under CGST Act, 2017.

5.6 The grant of budgetary support under the scheme shall be subject to compliance of provisions relating to any other law in force.

5.7 The manufacturer applying for benefit under this scheme for the first time shall also file the following documents:

(a) the copy of the option filed by the manufacturer with the jurisdictional Deputy Commissioner/ Assistant Commissioner of Central Excise officer at the relevant point of time, for availing the exemption notification issued by the Department of Revenue;

(b) document issued by the concerned Director of Industries evidencing the commencement of commercial production

(c) the copy of last monthly/quarterly return for production and removal of goods under exemption notification of the Department of Revenue.

(d) An Affidavit-cum-indemnity bond, as per Annexure A, to be submitted on one time basis, binding itself to pay the amount repayable under para 9 below.

Any other document evidencing the details required in clause (a) to (c) may be accepted with the approval of the Commissioner.

5.8 For the purpose of this Scheme, “manufacture” means any change(s) in the physical object resulting in transformation of the object into a distinct article with a different name or bringing a new object into existence with a different chemical composition or integral structure. Where the Central Tax or Integrated Tax paid on value addition is higher than the Central Tax or Integrated Tax worked out on the value addition shown in column (4) of the table below, the unit may be taken up for verification of the value addition:

Table

Serial No.	Chapter	Description of goods	Rate (%)	Description of inputs for manufacture of goods in column (3)
(1)	(2)	(3)	(4)	(5)

1.	17 or 35	Modified starch or glucose	75	Maize, maize starch or tapioca starch
2.	18	Cocoa butter or powder	75	Cocoa beans
3.	25	Cement	75	Lime stone and gypsum
4.	25	Cement clinker	75	Lime stone
5.	29	All goods	29	Any goods
6.	29 or 38	Fatty acids or glycerine	75	Crude palm kernel, coconut, mustard or rapeseed oil
7.	30	All goods	56	Any goods
8.	33	All goods	56	Any goods
9.	34	All goods	38	Any goods
10.	38	All goods	34	Any goods
11.	39	All goods	26	Any goods
12.	40	Tyres, tubes and flaps	41	Any goods
13.	72	Ferro alloys, namely, ferro chrome, ferro manganese or silico manganese	75	Chrome ore or manganese ore
14.	72 or 73	All goods	39	Any goods, other than iron ore
15.	72 or 73	Iron and steel products	75	Iron ore
16.	74	All goods	15	Any goods
17.	76	All goods	36	Any goods
18.	85	Electric motors and generators, electric generating sets and parts thereof	31	Any goods
19.	Any chapter	Goods other than those mentioned above in S.Nos.1 to 18	36	Any goods

Explanation: For calculation of the value addition the procedure specified in notification no 01/2010-CE dated 06.02.2010 of the Department of Revenue as amended from time to time shall apply mutatis-mutandis.

5.9.1 In cases where an entity is carrying out its operations in a State from multiple business premises, in addition to manufacture of specified goods by the eligible unit, under the same GST Identification Number (GSTIN) as that of the eligible unit, the eligible unit shall submit application for reimbursement of budgetary support alongwith additional information, duly certified by a Chartered Accountant, relating to receipt of inputs, input tax credit involved on the inputs or capital goods received by the eligible unit and quantity of specified goods manufactured by the eligible unit vis-a-vis the inputs, input tax credit availed by the registrant under the given GSTIN.

5.9.2 Under GST, one business entity having multiple business premises would generally have one registration in a State and it may so happen that only one of them (eligible unit) was operating under Area Based Exemption Scheme. In such situations where inputs are received from another business premises of (supplying unit) of the same registrant (GSTIN) by, the details of input tax credit of Central Tax or Integrated Tax availed by the supplying unit for supplies to the eligible unit shall also be submitted duly certified by the Chartered Accountant.

The jurisdictional Deputy/Assistant Commissioner in such cases shall sanction the reimbursement of the budgetary support after reducing input tax credit relatable to inputs used by the supplying unit.

6. INSPECTION OF THE ELIGIBLE UNIT

6.1 The Budgetary Support under the Scheme shall be allowed to an eligible unit subject to an inspection by a team constituted by DIPP for every State to scrutinize in detail the implementation of the previous schemes. The inspection report shall be uploaded by the inspection team on ACES-GST portal of the Central Board of Excise & Customs (CBEC) and shall be made available to the jurisdictional Deputy/Assistant Commissioner of the Central Tax on the portal before sanction of the budgetary support. Budgetary support will be released only after the findings to these teams are available. Provided that where delay is expected in such findings of the inspection, the Deputy/ Assistant Commissioner of Central Taxes may sanction provisional reimbursement to the eligible unit. Such provisional reimbursement shall not continue beyond a period of six months.

7. MANNER OF BUDGETARY SUPPORT

7.1 The manufacturer shall file an application for payment of budgetary support for the Tax paid in cash, other than the amount of Tax paid by utilization of Input Tax credit under the Input Tax Credit Rules, 2017, to the Assistant Commissioner or Deputy Commissioner of Central Taxes, as the case may be, by the 15th day of the succeeding month after end of quarter after payment of tax relating to the quarter to which the claim relates**.**

7.2 The Assistant Commissioner or Deputy Commissioner of Central Taxes, as the case may be, after such examination of the application as may be necessary, shall sanction reimbursement of the budgetary support. The sanctioned amount shall be conveyed to the applicant electronically. The PAO, CBEC will sanction and disburse the recommended reimbursement of budgetary support.

8. BUDGETARY PROVISION AND PAYMENT OF AMOUNT OF BUDGETARY SUPPORT

8.1 The budgetary support shall be disbursed from budgetary allocation of Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce & Industry. DIPP shall keep such budgetary allocation on the disposal of PAO, CBEC. The eligible units shall obtain one time registration on the ACES-GST portal and obtain a unique ID which is to be used for all processing of claims under the scheme. The application by the eligible unit for reimbursement of budgetary support shall be filed on the ACES-GST portal with reference to unique ID obtained and shall be processed by the Deputy Commissioner or Assistant Commissioner of the Central Tax for sanction of the admissible amount of budgetary support.

8.2 The application for imbursement of budgetary support shall be made by the eligible unit after the payment of CGST/IGST has been made for the quarter to which the claim relates, in cash in respect of specified goods after utilization of Input Tax credit, if any.

8.3 The sanctioning authority (AC/DC) with the approval of the Commissioner may call for additional information (inclusive but not limited to past data on trends of production and removal of goods) to verify the correctness of various factors of production such as consumption of principal inputs, consumption of electricity and decide on the basis of the same, if the quantum of supply have been correctly declared.

8.4 Special audit by the Chartered Accountant/Cost Accountant may be undertaken for units selected based on the risk parameters identified by CBEC in order to verify correctness of declared production capacity and production or overvaluation of supplies. Such special audit shall be undertaken only with the approval of the Commissioner, CGST.

8.5 The list of sanctions for payment, on the basis of amount sanctioned by the jurisdictional Deputy Commissioner or Assistant Commissioner of the Central Tax shall be forwarded by the authorised officer of the jurisdictional Commissionerate of the Central Tax through the ACESGST portal to e-PAO, CBEC for disbursal directly into the bank accounts of the eligible units.

9. REPAYMENT BY CLAIMANT/ RECOVERY AND DISPUTE RESOLUTION

9.1 The budgetary support allowed is subject to the conditions specified under the scheme and in case of contravention of any provision of the scheme/ notification, the budgetary support shall be deemed to have never been allowed and any inadmissible budgetary support reimbursed including the budgetary support paid for the past period under this scheme shall be recovered along with an interest @15% per annum thereon. In case of recovery or voluntary adjustment of excess payment, repayment, recovery or return, interest shall also be paid by unit at the rate of fifteen per cent per annum calculated from the date of payment of refund till the date of repayment, recovery or return.

9.2 When any amount under the scheme is availed by wrong declaration of particulars regarding meeting the eligibility conditions in this scheme or as specified under respective exemption notification issued by the Department of Revenue, necessary action would be initiated and concluded in the individual case by the Office of concerned Assistant Commissioner or Deputy Commissioner of Central Taxes, as the case may be.

9.3 **The procedure for recovery**: Where any amount is recoverable from a unit, the Assistant Commissioner or Deputy Commissioner of Central Tax, as the case may be, shall issue a demand note to

the unit (i) intimating the amount recoverable from the unit and the date from which interest thereon is due and (ii) directing the manufacturer to deposit the full sum within 30 days of the issue of the demand note in the account head of DIPP and submit proof of deposit to him/her.

9.4 Where the amount is not paid by the beneficiary within the time specified as above, action for recovery shall be taken in terms of the affidavit –cum- indemnity bond submitted by the applicant at the time of submission of the application, in addition to other modes of recovery. 9.5 Where any amount of budgetary support and/or interest remains due from the unit, based on the report sent by the Assistant Commissioner or Deputy Commissioner of Central Tax as the case may be, the authorized officer of DIPP shall, after the lapse of 60 days from the date of issue of the said demand note take required legal action and send a certificate specifying the amount due from the unit to the concerned District Magistrate/ Deputy Commissioner of the district to recover that amount, as if it were arrears of land revenue 10 Residual issues related to the Scheme arising subsequently shall be considered by DIPP, Ministry of Commerce & Industry whose decision shall be final and binding.

11. SAVING CLAUSE

11.1 Upon cessation of the Scheme, the unpaid claims shall be settled in accordance with the provisions of the Scheme while the recovery and dispute resolution mechanisms shall continue to be in force.

Sd- .

(RAVINDER)

Joint Secretary to the Government of India

Annexure A of Notification dated 5th Oct, 2017

AFFIDAVIT – CUM – INDEMNITY BOND

I / We Shri_____ s/o_____(add names) in my/our capacity of_____(designation) of_____ (Company/Unit Name) hereby solemnly affirm and declare for and on behalf of_____(company/unit name) that an application for registration for reimbursement of budgetary support has been filed on_____ under the Scheme of Budgetary Support notified by Department of Industrial Policy and Promotion

(DIPP).

I/We confirm that the eligible unit is manufacturing and supplying specified goods on payment of Central GST/ Integrated GST and the claim will not include any other activity being carried out under the same GSTIN.

I /We further affirm and declare, as stated above, goods other than specified goods manufactured by the eligible unit will not be taken into account while filing the application under the scheme. The input tax credit on the goods availed by the eligible manufacturing unit or the supplying unit under the same GSTIN will be taken into account while calculating the input tax credit of the eligible manufacturing unit. No amount of budgetary support which is not due as per the conditions of the scheme notified by DIPP shall be claimed by the eligible unit and where any mis-declaration is detected, the amount paid by the Government shall be paid back by me/us with interest as prescribed in the scheme.

I/We solemnly affirm and declare that whatever is stated above is true to the best of my / our knowledge and record. I/We further indemnify the Government of India to recover the amount, if any for any revenue loss which may occur (might have occurred) due to the above submission made by me / us.

DATE : NAME:

PLACE: SIGNATURE:

DESIGNATION:

ADDRESS:

Note:

1. This indemnity bond should be submitted on Rs.150/- Stamp Paper.
2. The bond is required to notorised.
3. Proprietors /Partners / Directors / Authorised Signatory has to sign the bond alongwith their name and residential address. In case the bond is signed by authorized signatory, copy of power of attorney in favour of authorized signatory needs to be enclosed.

Copy for information and necessary action to:

(i) All Ministries/Departments of the Government of India and the NITI Aayog.

(ii) Department of Revenue, (Central Board OF Excise and Customs, North Block, New Delhi.

(iii) Chief Secretaries of the States of Arunachal Pradesh, Assam, Himachal Pradesh, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Sikkim & Uttrarakhand .

(iv) Secretary (Industries) of the States of Arunachal Pradesh, Assam, Himachal Pradesh, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Sikkim & Uttrarakhand.

Copy also to:

(i) Cabinet Secretariat

(ii) PMO

Agenda Item 8: Ad-hoc Exemptions Order(s) issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information

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

2. The details of the ad hoc exemption orders issued recently are as follows:

Order No.	Date	Remarks
AEO No. 03 of 2023	28th March, 2023	Request from Shri Maneesh P.M. for exemption from payment of customs duty under section 25(2) of Customs Act, 1962 on import of drug Inj. Qarziba (order copy enclosed)

3. This is placed for the information of GST Council.

F. No. 452/04/2023-Cus V
Ad-hoc Exemption Order No. 3 of 2023
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 28th March 2023

To,
The Chief Commissioner of Customs,
Mumbai Customs Zone -III

Sir,

Subject: Request for *Ad hoc* exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of drug Inj. Qarziba– reg.

The undersigned is directed to refer to a request received from Shri Maneesh P.M., father of baby Niharika G.M., seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of injection Qarziba, a drug used for immunotherapy.

2. Shri Maneesh P.M. has represented that:

i. his daughter, Niharika G.M., has been diagnosed with high-risk Neuroblastoma. She requires immunotherapy treatment at Tata Memorial Hospital.
ii. they raised money for import of the Injection, through crowd funding.
iii. they have obtained approval from CDSCO to import this life saving medicine for personal use.
iv. the Inj. Qarziba needs to be imported from Switzerland and as per the doctor's advice 15 vials would be required for the treatment of the child.

2.1 In view of the above, a request for waiving off the customs duties and GST on the import of this lifesaving drug Qarziba has been made.

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 15 vials of Qarziba, 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 Niharika G.M. 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. The port of import may ensure that the conditions prescribed for waiving of basic customs duty are fulfilled.

F. No. 452/04/2023-Cus V
Ad-hoc Exemption Order No. 3 of 2023
Issued under section 25(2) of the Customs Act, 1962

4. An undertaking that the goods covered by this Order will be used solely for the treatment of baby Niharika G.M. 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 27.09.2023

Yours faithfully,

23/3/23

(Harish Kumar)
Under Secretary

Copy to:

- Mr. Maneesh P.M., Melechira, Nivedyam Aryanad, Thiruvananthapuram, Post Office – 695542, Kerala. (Email: Maneeshard@gmail.com)
- Commissioner of Customs, Mumbai (Import), Air Cargo Complex, Sahar, Andheri (East), Mumbai--400099
- 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,

23/3/23

(Harish Kumar)
Under Secretary

Confidential

Agenda for

50th GST Council Meeting

11th July 2023

Volume-II

GST Council Secretariat New Delhi

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
14th June, 2023

OFFICE MEMORANDUM

Subject: Notice for the 50th Meeting of the GST Council scheduled to be convened on 11th July, 2023.

The undersigned is directed to refer to the subject stated above and to convey that the 50th Meeting of the GST Council will be held on 11th July, 2023 at New Delhi. The schedule of the Meeting is as follows:

• **Tuesday, 11th July, 2023:** 11:00 A.M. onwards

2. In addition, an Officers' Meeting will be held on 10th July, 2023 as per the following schedule:

• **Monday, 10th July, 2023:** 2: 00 P.M. onwards

3. The agenda items and other details for the 50th Meeting of the GST Council will be communicated in due course of time.

4. Keeping in view the logistical constraints, it is requested that participation from each State/UT may be kept limited to two (02) officers in addition to the Hon'ble Member of the GST Council.

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

Sd/-
(Sanjay Malhotra)
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.

TABLE OF CONTENTS

Agenda Item 9: Report of 3rd Meeting of the Group of Ministers (GoM) on GST System Reforms

The GST Council in its 45th Meeting had decided to constitute a Group of Ministers (GoM) on System Reforms 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 vide OM dated 24.09.2021 by subsuming the earlier GoMs on IT challenges and revenue mobilization.

2. Vide OM dated 22nd September 2022, the GoM has been reconstituted and the present constitution of the Group of Ministers committee is as follows:

S.No.	Name	Designation	Convener/ Member
1	Shri Devendra Fadnavis	Deputy Chief Minister, Maharashtra	Chairman and Convener
2	Shri Dushyant Chautala	Deputy Chief Minister, Haryana	Member
3	Shri Manish Sisodia	Deputy Chief Minister, Delhi	Member
4	Smt. Ajanta Neog	Minister for Finance, Assam	Member
5	Shri Buggana Rejendranath	Minister for Finance, Planning and Legislative Affairs, Andhra Pradesh	Member
6	Shri Niranjan Pujari	Minister for Finance and Excise, Odisha	Member
7	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resources Management, Tamil Nadu	Member
8	Shri T.S. Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member

3. The first meeting of the Group of Ministers was held on 21st October 2022 and the second meeting of the Group of Ministers (GoM), was conducted on 10th February, 2022 (through video-conference). The First Report of the GoM based on the approved minutes of these meeting was tabled before the GST Council in its 47th Meeting held on 28th and 29th June, 2022 at Chandigarh.

4. Third Meeting of GoM on System Reforms

4.1 The GoM on GST System Reforms held its 3rd Meeting on 13th February, 2023 under the Chairmanship of the Hon'ble Convenor of the GoM, Shri Devendra Fadnavis, Hon'ble Deputy Chief Minister of Maharashtra and the meeting was attended by Members from Haryana, Tamil Nadu, Delhi, Odisha and Andhra Pradesh. Members from Assam and Chhattisgarh were unable to attend due to prior commitments. Gujarat and Telangana were the special invitees at the meeting. Gujarat has been implementing a Biometric Authentication Pilot Project and the State of Telangana had been using data analytics on the Point of Sale (PoS) data to identify tax evaders.

5. Implementation Status of decisions of Second Meeting (Priority I Agenda Items)

5.1 The implementation status of Priority I Agenda items as approved in Second Meeting of GoM is detailed out in the Report of 3rd Meeting of the GoM (pages 6- 9 of the Report).

6. Items for prioritized action for 3rd Meeting of GoM

6.1 Accordingly, after receipt of the suggestions of the States and due deliberations, **the final set of Priority II agenda items for the 3rd meeting were determined by the GoM as follows:**

a. Hard locking of Table-4 of GSTR-3B.
b. Tracking and identification of Non-Existent Tax Payers (NETP).
c. Reporting of transactions by payment gateways & banks.
d. HSN level reporting in GSTR-1.
e. Proposal for
 i. Integration of Income Tax, ICEGATE and other data points.
 ii. Import of Services and evasion of tax thereon

f. Development of MIS
 i. MIS of commodities liable for RCM (Odisha)
 ii. MIS report of the Auto populated interest on account of late payment. (TN)

7. The detailed discussion and decisions of the GoM on GST System Reforms with respect to these Priority II agenda items are detailed out in the Report of 3rd Meeting of GoM on GST Systems having the approval of the Hon'ble Convenor of the GoM and is placed as **Annexure A.**

8. Decisions of GoM in 3rd Meeting

8.1 GoM has inter alia approved following decisions and recommendations for placing before GST Council:

8.1.1 Approved systemic intervention in the form of spike rule based on gap in ITC utilization (threshold of mismatch between GSTR 2A/2B and GSTR 3B suggested as Rs. 25 lakh or more) shall be implemented in phased manner. This will be on similar line of Rule 88C (mismatch between GSTR 1 and GSTR 3B). In the cases where defined threshold of ITC gap is crossed, an intimation shall be sent to taxpayer and a facility to furnish reason for such gap shall be given to taxpayer.

8.1.2 Approved to formulate an SoP for handling NETP and a uniform policy for ab-initio cancellation of NETP across State/CBIC Tax Administration to be followed. An SoP for the same may be issued by policy wing. Further to develop System driven solution to facilitate the declaration of NETP by Tax Administration.

8.1.3 The issue of reporting B2C transactions through Payment Gateways and Point of Sale (PoS) machines was considered and the GoM gave in-principle approval to this agenda item.

8.1.4 Approved that in first phase, HSN data in Table 12 of GSTR 1, should be auto populated from e-invoice and EWB. (In initial phase AATO Rs. 5 Crore or more to be considered). Further, phase wise and time bound approach to be adopted for action against noncompliant taxpayers with nudging messages and e-mails. Blocking of GSTR 1 for failure to fill HSN will be taken up in the later phase.

8.1.5 Approved the formation of Committee of Officers from TPRU-1, GSTN, Center, State (Maharashtra) and RBI and the said Committee will share a report on priorities to the GoM Secretariat, at GSTN, for further processing.

8.1.6 Approved the development of MIS.

9. Method of Implementation

9.1 The method of implementation for implementation of the recommendation of GoM as agreed upon by the Members are as follows:

9.1.1 The GoM would submit its report to the GST Council periodically. Implementation of its recommendation, which may also involve legal changes, would first need in principle approval from the GST Council.

9.1.2 The legal changes for the recommendations of the GoM would need to be discussed and detailed by the Law Committee. This may also include some business process changes as deemed fit by the Law Committee for implementation of the GoM recommendations.

9.1.3 After detailing the business process and the necessary legal changes, based on the extent of changes suggested in the Law Committee, the proposal would be brought before the GST Council for information / approval, as the case may be.

10. The Report of the 3rd Meeting of GoM on GST System Reforms (**Annexure A**) having approval of the Hon'ble Convenor of the GoM, is placed before the GST Council for consideration and approval.

Annexure-A

GoM on GST System Reforms: Report of Third Meeting

Goods and Services Tax Network
4thFloor, Wordmark-I, East Wing, Aerocity, New Delhi-110037

CONTENTS

Group of Ministers (GoM) on GST System Reforms: Report on Recommendations of Third Meeting

I. Introduction

1. During the 45th meeting of the GST Council, held on 21st September 2021, it was decided to constitute a sub-committee of Group of Ministers (GoM). The GoM was tasked with the objective of analyzing, studying, and proposing strategies to curb tax evasion. Additionally, they were assigned to provide suggestions that might aid in preventing fraudulent activities within the GST framework.

2. As per the OM dated 22nd September 2022, the GoM is reconstituted and present Membership of the GoM is as follows:

#	Name	Designation	Convener/ Member
1.	Shri Devendra Fadnavis	Deputy Chief Minister, Maharashtra	Chairman and Convener
2.	Shri Dushyant Chautala	Deputy Chief Minister, Haryana	Member
3.	Shri Manish Sisodia	Deputy Chief Minister, Delhi	Member
4	Smt.Ajanta Neog	Minister for Finance, Assam	Member
5	Shri Buggana Rejendranath	Minister for Finance, Planning and Legislative Affairs, Andhra Pradesh	Member
6	Shri Niranjan Pujari	Minister for Finance and Excise, Odisha	Member
7	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resources Management, Tamil Nadu	Member
8	Shri T.S. Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member

3. The first meeting of the Group of Ministers was held on 21st October 2022, during which GSTN provided an overview of the GST system. Furthermore, GSTN sought guidance and directions from the Chair and Group Members regarding the proceedings of the GoM. The meeting was presided over by the Hon'ble Shri Ajit Pawar, Deputy Chief Minister of Maharashtra. The discussions and results of the first meeting are summarized below, detailing the topics and agenda items that the GoM was set to consider:

   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.
   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 (through video-conference) under the Chairmanship of Shri Ajit Pawar, Hon'ble Deputy Chief Minister, Maharashtra. During this meeting, the GoM agreed on the importance of utilizing data analytics to prevent GST evasion and augment GST revenue. During the second meeting of the GoM, various suggestions and proposals recieved from the States were prioritized. Further the Priority I items were deliberated upon and recommendations were to the GST Council. It was agreed by the member states that the Priority II items would be addressed and decisions concerning them would be made in the third GoM meeting.

5. The Third Meeting of GoM was held on 13th February 2023 at Mumbai. The meeting was chaired by Shri Devendra Fadnavis, Hon'ble Deputy Chief Minister of Maharashtra, and was attended by Members from Haryana, Tamil Nadu, Delhi, Odisha and Andhra Pradesh. Members from Assam and Chhattisgarh were unable to attend due to preoccupation. During the meeting, GoM agreed to use Technology and implement data analytics as a strategy for revenue augmentation.

6. Prior to the third meeting of the GoM, feedback was collected from the member states that are part of the GoM. Gujarat and Telangana, were the special invitees at the meeting. Officers from Gujarat were invited because they were implementing a Biometric Authentication Pilot Project. On the other hand, Telangana had been using data analytics on the Point of Sale (PoS) data to identify tax evaders. Telangana officers shared their work and the procedures they used for identifying Tax evaders. GSTN took into consideration all these suggestions, had additional conversations with the officers from these states, and prepared a list of agendas for the Third Meeting of GoM to discuss.

7. As a result, the final set of Priority II agenda items for this meeting were determined as follows:

    a. Hard locking of Table-4 of GSTR-3B.
    b. Tracking and identification of Non-Existent Tax Payers (NETP).
    c. Reporting of transactions by payment gateways & banks.
    d. HSN level reporting in GSTR-1.
    e. Proposal for
        i. Integration of Income Tax, ICEGATE and other data points.
        ii. Import of Services and evasion of tax thereon
    f. Development of MIS
        i. MIS of commodities liable for RCM (Odisha)
        ii. MIS report of the Auto populated interest on account of late payment. (TN)

II. Implementation Status of decisions of Second Meeting (Priority I Agenda Items):

The status of Priority I Agenda items approved in Second Meetingof GoM is as mentioned below.

Agenda	Action Item	Decision of GoM	Present Stats
1.	Integrated approach on improving Registration process: Using biometric authentication for high-risk applicants. (Item 1)	Use of mandatory biometric authentication for high- risk applicants for registration under GST. Integration of registration process with UIDAI and the pilot for the same was agreed to be conducted by Gujarat.	• CR 22252 is issued for development of functionality. • Biometric Aadhar Authentication process in Regression testing • Meeting held with Gujarat and Gujarat proposed to consider Low Risk TPs for Bio metric authentication in this use case. • For Low-Risk TPs, amendment needs to be done in Law.
2 A	Risk Assessment of New applicants /registrants using Machine Learning (ML) and to carry out Mandatory Physical Verification as	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.	• Registration Risk Score logic changed to suit the requirement for BO Registration officer. Risk Score available to the officers. • A mechanism is under development to mark the High-Risk applicants as mandatory for physical verification. (BIFA CR 22865-A Part I –BIFA activity completed).

Agenda	Action Item	Decision of GoM	Present Stats
	Assigned by the System (Item 2A)		• Requirement is finalized and it under development process.
2 B	AI/ML based interdiction grounded on suspicious behaviour of existing taxpayers to be used for carrying out system assigned verifications etc. (Item 2B)	GoM approved AI/ML based interdiction to generate MIS for officers to take post registration verification and other necessary actions for high-risk taxpayers.	• A mechanism to identify the Suspicious behaviour of existing Registrants has been developed and deployed. High Risk taxpayers are transferred from BI to BO, under this pilot. • Nodal officer can further allocate for mandatory physical verification. • For Model I, API is already developed. • G2G API developed. (CR 23330)
2 C	Online Address verification of New and Existing Taxpayers with the help of Geocoding (Item 2C)	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.	• For new tax payers, it has already been deployed in March 2022. • For existing Tax payers, the functionality is in production since January,2023 for Haryana, Delhi,

Agenda	Action Item	Decision of GoM	Present Stats
			Karnataka, Rajasthan, Telangana and Gujarat. For other States it is under process in phased manner and by June 2023, it will be available for all States.
3	Capturing Electricity Bill meta data (CA No.) during Registration process	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. The State of **Maharashtra** agreed for the pilot project	• In State Specific Tab, the data about Customer Account No. of Elec. Bills notified by Maharashtra state is to be collected and same is designed in the registration form. • CR 23498 issued and is in development. • Details of API specs shared with MH State (for receiving response regarding validation of CA No. and other vital details like address etc.) • Response awaited from MH and work is under progress

Agenda	Action Item	Decision of GoM	Present Stats
4	Validation of Bank Accounts of taxpayers through NPCI	. Real time validation of Bank Accounts through integration of GST System with NPCI. . GSTN to make available information related to all bank accounts against a particular PAN to officers.	• The integration with NPCI is completed to get validation of Bank Account details updated by taxpayers. The Bank Account validation status is displayed to taxpayers under My Profile section. • Working on the functionality to display taxpayer details to Tax Officers, where Bank Account validation is Failed/Invalid Tax Officers (CR 22711).
7	Lead based dashboard, Task & Case Creation and Feedback Mechanism in Back Office	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)	• The Feedback Mechanism functionality has been rolled out PAN India in November 2022.

III. Items for prioritized action for 3rd Meeting:

The GoM engaged in thorough discussions on the agenda items of the third GoM meeting. A summary of the agenda items discussed during Third Meeting is provided below.

#	Agenda	Proposal after Officers Meeting
1	Hard locking of Table-4 of GSTR-3B	• The view that emerged is that ITC utilization-based spike rule in line with rule 88C may be a feasible solution to implement. • Essentially intimation of ITC gap and facility to furnish reply or reason (phase I). • Later on, it may be converted to blocking of GSTR1 (Phase II)
2	Tracking and identification of Non-Existent Tax Payers (NETP). It involves i. Cancellation of TP ab-initio /Suspension of Taxpayers i. Declaration of Taxpayer as NETP	• System based solution to report the NETP. • The details of Beneficiaries (recipients), suppliers will be conveyed to officers on system. • In Phase I, recipients would be informed and in Phase 2, suppliers would be informed.

#	Agenda	Proposal after Officers Meeting
3	Reporting of transactions by payment gateways & banks. To capture details of B2C sale through retail, not reported by taxpayers where payment is received through PoS machines by the supplier, from all Banks.	• The problem involves taking data of transactions where payment made through PoS terminal and by online mode and using it to assess turnover. • It may be resolved in stages. • Data of payments made through PoS terminal may be collected and PAN based summary of payments made available to the proper officer against registered as well unregistered entities. • To explore possibility of linkage/taking data from Annual Information system (AIS) of CBDT.
4	HSN level reporting in GSTR-1: To improve data quality, integrating and auto-population of e-invoice/e-way bill data with Table 12 of GSTR1	It is proposed to take following steps: - • Identification of Taxpayers who are filing incorrect data in GSTR 1 and send them mail for course correction • Auto-populate Table 12 of GSTR 1 based on e-invoices or EWB information. • Validation of Table 12 of GSTR 1 in last phase

#	Agenda	Proposal after Officers Meeting
5	Proposal for Integration of Income Tax, ICEGATE and other data points. Import of Services and evasion of tax thereon Import of Services can be addressed by modifying the reporting formats of AD Banks under FEMA in coordination with RBI to include necessary fields like PAN of remitting entity / person and cause of remittance like non-physical import / export, transfer to relative, gift, etc. At present it is difficult to corelate import of services data with GST Returns data.	To address issue of import of services, DoR may Constitute a team under TPRU to work on the proposed solution and present its Report. Members of the team may be: State: 1, Centre 1, GSTN 1, TPRU 1 and RBI 1 On integration of other data points, GoM may direct it as desirable step to be taken forward through DoR.
6	Development of MIS a. MIS of commodities liable for RCM (Odisha) b. MIS report of the Auto populated interest on account of late payment. (TN)	The reports will be developed on priority as requested by Odisha and Tamil Nadu . MIS of commodities liable for RCM: It was discussed that GSTN would develop such MIS report. (Odisha) i. MIS report of the Auto populated interest on account of late payment. GSTN would develop. (TN)

IV. Decisions of GoM in 3rd Meeting: -

This discussion and decision of the GoM on the items are described in succeeding paras.

Item – 1: Hard locking of Table-4 of GSTR-3B:

After due deliberations, GoM took view that, the hard locking of Table 4 of GSTR-3B is not feasible as of now, as taxpayers may face difficulties in business activities.

Decision of GoM:

The GoM approved following:

a. Systemic intervention in the form of spike rule based on gap in ITC utilization (threshold of mismatch between GSTR 2A/2B and GSTR 3B suggested as Rs. 25 lakh or more) shall be implemented in phased manner. This will be on similar line of Rule 88C (mismatch between GSTR 1 and GSTR 3B)
b. In the cases where defined threshold of ITC gap is crossed, an intimation shall be sent to taxpayer and a facility to furnish reason for such gap shall be given to taxpayer.
c. Further, mechanism for verification and initiation of action in non-compliant cases is to be provided.
d. Whereas, in subsequent phase filing of GSTR-1 may be blocked till the officer verifies and approve the reply so filed.

Item – 2: Tracking and identification of Non-Existent Tax Payers (NETP). It involves: -

i) Declaration of Taxpayer as NETP,

ii) System driven Identification of suppliers and recipients of NETP.

Proposed Solution:

i. System based solution to report the NETP would be provided to the officers.
ii. The details of Beneficiaries (recipients) of the NETP suppliers will be conveyed to officers on system in Phase I.
iii. In Phase 2, related parties (including suppliers (to NETP)) would be informed.
iv. This would lead to NETP data getting captured and follow-up becoming easier.

Decision of GoM:

The GoM approved following-

a. To formulate the SoP for handling NETP (GSTN and Maharashtra will prepare SoP).
b. Identification of NETP by Tax officers and officers to fill NETP Form (part of SoP).
c. Uniform policy for ab-initio cancellation of NETP across State/CBIC Tax Administration to be followed. An SoP for the same may be issued by policy wing.
d. To develop System driven solution to facilitate the declaration of NETP by Tax Administration.
e. Facility to report NETP and Creation of Central repository for NETP accessable to all.
f. System based communication of recipients of NETP among the state up to the jurisdictional officer.
g. Flagging of related entities of declared NETPs (including suppliers) for appropriate action.
h. System based facility to create tasks of various actions against related parties (including suppliers) and Recipients to be developed. (phase-III).

Item – 3: Reporting of transactions by payment gateways & banks. To capture details of B2C sale through retail, not reported by taxpayers where payment is received through PoS machines by the supplier, from all Banks.

Proposed Solution:

The issues may be resolved in Phases and in first phase issue of B2C sale through retail, not reported by taxpayers where payment is received through PoS machines by the supplier may be addressed.

i. Identification of Bank Account in which B2C consideration from a PoS machine is received, may be made mandatory by law;
ii. Linking the Bank Account to the PAN number is already there but can be stressed in SoP;
iii. Notifying banks to provide information as per a form at PAN level, [This information should be collected only for bank accounts identified at (a)],
iv. Estimating turnover based on the input at PAN level,

v. Identifying cases of high value of mismatch between estimated turnover and reported turnover.

vi. Getting the taxpayer to explain the turnover at GSTN level and submit reconciliation.

Decision of GoM:

The GoM discussed the issue of reporting B2C transactions through Payment Gateways and Point of Sale (PoS) machines, and gave in-principle approval to this agenda item. It was further considered that all digital payment transactions are processed through specific networks, such as NPCI for RUPAY, VISA, MASTERCARD, etc. However, it was noted that the proposed scheme might exclude peer-to-peer (P2P) digital payments.

The convenor of GoM, directed a meeting to be held in Mumbai. This meeting is to involve officers from the Centre, State (Maharashtra), GSTN and other necessary stakeholders. The goal of this meeting is to develop a detailed methodology and present proposal needs to be expanded & PoC carried out. Additionally, consultations with the RBI and the NPCI may be sought during the process.

Item – 4: HSN level reporting in GSTR-1: To improve data quality, integrating and auto-population of e-invoice/e-way bill data with Table 12 of GSTR1.

Proposed Solution:

Officers proposed to take following steps: -

i. Identification of Taxpayers who are filing incorrect data in GSTR 1 and send them mail for course correction. (Already started)

ii. Auto-populate Table 12 of GSTR 1 based on e-invoices or EWB information.

iii. Validation of Table 12 of GSTR 1 in last phase with respect to total value declared.

iv. Blocking of GSTR1 at a later date for taxpayers having high % of error on value terms.

Decision of GoM:

The Hon, GoM has approved the following decisions:

a. In first phase, HSN data in Table 12 of GSTR 1, should be auto populated from e-invoice and EWB. (In initial phase AATO Rs. 5 Crore or more to be considered)
b. Phase wise and time bound approach to be adopted for action against non-compliant taxpayers with nudging messages and e-mails. Blocking of GSTR 1 for failure to fill HSN will be taken up in the later phase.

Item – 5:

- **Integration of Income Tax, ICEGATE and other data points.**
- **Import of Services and evasion of tax thereon**

Proposed Solution

i. The issue of integration of ICEGATE and Income Tax data can be addressed by DoR on the basis of precisely identified data sets which are needed for the purpose of augmenting GST collection.

ii. In phase one, to address issue of import of services, DoR may constitute a team under TPRU to work on the proposed solution and present its Report. Members of the team may be: State:1, Centre:1, GSTN: 1, TPRU: 1, RBI: 1.

[*Note: The issue can be addressed by modifying the reporting formats of AD Banks under FEMA in coordination with RBI to include necessary fields like PAN of remitting entity/person and cause of remittance like non-physical import/export, transfer to relative, gift, etc. At present it is difficult to corelate import of services data with GST Returns data.*]

Decision of GoM:

a. The GoM has approved the formation of Committee of Officers from TPRU-1, GSTN, Center, State (Maharashtra) and RBI.
b. The said Committee will share a report on priorities to the GoM Secretariat, at GSTN, for further processing.

Item – 6: Development of MIS

i. MIS of commodities liable for RCM (Odisha)

ii. MIS report of the Auto populated interest on account of late payment. (TN)

Decision of GoM:
The GoM has approved the development of MIS

V. 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:

1. The GoM would submit its report to the GST Council periodically. Implementation of its recommendation, which may also involve legal changes, would first need in principle approval from the GST Council.

2. The legal changes for the recommendations of the GoM would need to be disucssed and detailed by the Law Committee. This may also include some business process changes as deemed fit by the Law Committee for implemention of the GoM recommendations.

3. After detailing the business process and the necessary legal changes, based on the extent of changes suggested in the Law Committee, the proposal would be brought before the GST Council for informaton / approval, as the case may be.

****

Agenda Item 10: Proposal for creation of State Co-ordination Committee comprising of the GST authorities from the State and the Central Tax Administrations.

1. The National Coordination Meeting was held on 24th April, 2023 under the Chairmanship of the Revenue Secretary. As an outcome, it was decided to launch an All India drive against fake registrations. Instructions No.1/2023 dated 04.05.2023 regarding the conduct of the special drive were issued. Also, a National Coordination Committee headed by Member (GST), CBIC and comprising Chief Commissioner/Commissioner of State Taxes of Gujrat, Telangana, West Bengal and Principal/Chief Commissioner of Delhi CGST Zone and Bhopal CGST Zone as Members was formed to monitor the progress of the drive against fake registrations and fake ITC. The results of this coordinated drive against fake registrations and fake ITC have been very encouraging.

2. The fake registration cases require follow up in cases where the ITC has been passed on. For sharing of this information regarding follow up of the fake drive cases and other enforcement measures at ground level, for sharing of Audit findings and other audit related matters, for adopting a common legal stand/strategy, it is proposed that there should be an institutionalized platform for information sharing and collaboration across Central and State GST Administrations.

3. It is proposed that a Co-ordination Committee may be formed in each State/UTs comprising of Central and State Tax Authorities for knowledge sharing on GST matters and coordinated efforts towards administrative and preventive measures.

4. The constitution of the said Committee, its functions, mandate/scope, frequency of the meetings is proposed below. Further, whereas the Chief Commissioner/Commissioners of CGST/SGST shall be co-chairs, they shall be conveners on rotational basis for one year each.

A. Constitution of the Committee:

The proposed Constitution of the Committee is as follows:

i. Zonal Principal Chief Commissioner/ Chief Commissioner of Central Tax (Co- chair)
ii. Chief Commissioner/ Commissioner of State Tax (Co-chair)
iii. Representative of DG GST Intelligence (DGG), CBIC from concerned Zone/ State
iv. Additional/Joint Commissioner of office of Zonal Principal Chief Commissioner/ Chief Commissioner of Central Tax and an officer nominated by the Chief Commissioner/ Commissioner of State Tax,
v. Any other member/officer may be co-opted with the permission of the Co- chairs.

The co-opted officers could be officers well conversant with the ground level issues and serve for greater coordination between Centre and States.

B. Term of the Committee - The Committee will be constituted on perpetual basis.

C. Functions and mandate of the Committee:

(i) The Committee shall engage in data sharing on important cases of evasion or audit, knowledge sharing and promote coordinated efforts in checking fake ITC being passed on, curbing tax evasion practices, sharing important audit paras & modus-operandi detected in Audit/Investigation, maintaining and updating contact details of field level officers and other GST related matters.

(ii) Referring any issue requiring a change in Act/Rules/Notification/ Form/Circular/Instruction/improvement on GST portal, etc., to the GST Council Secretariat and the relevant Policy Wing of the CBIC/ GSTN/ DoR.

(iii) Make collaborative efforts on the issues pertaining to taxpayer facilitation as well as taxpayer grievances and conducting outreach programme.

(iv) To arrive at a uniform stand by the Central and State GST Administration in GST related petitions before any legal forum.

(v) Co-ordination in the matter regarding Investigation/anti-evasion proceedings so as to ensure that on the same issue, investigation in respect of taxpayers are not undertaken by multiple administration.

(vi) Conducting a coordinated verification drive for suspicious tax payers at local level.

(vii) Any other GST matter deemed fit for coordinated work between Central and State Tax Administrations.

D. Periodicity of Meeting of the Committee- The Committee shall meet once every quarter or as the Co-chairs may decide.

Agenda Item 11: Implementation of GSTAT consequent to passing of Finance Act, 2023

The final Report and recommendations of the Group of Ministers (GoM) on constitution of Goods and Services Tax Tribunal constituted vide OM No. A-50050/150/2018-Cestat-DoR was tabled before the GST Council in its 49th Meeting.

2. After detailed deliberations, the Council recommended that there should be one GST Appellate Tribunal with a Principal Bench and State Benches. Each Bench of the Appellate Tribunal would consist of four members i.e. two Judicial Members and two Technical Members, one Member from Centre and one from the State. Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed fifty 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 single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member.

3. The report of GoM on GSTAT was adopted by the Council with certain modifications. Further, the amendments in CGST Act relating to the constitution of GST Appellate Tribunal have been incorporated through Finance Act, 2023 (refer clause 149-154 of the Finance Act, 2023), by substitution of sections 109, 110 and 114 of CGST Act, 2017 and by amending sections 117, 118 and 119 of CGST Act, 2017.

4. The status of corresponding amendments proposed to be made in State/UT GST Acts and number & location of proposed Tribunal benches in States/UT are compiled and placed as **Annexure A** along with their jurisdictions.

5. The GST Council may recommend a suitable date for notifying the amendments to CGST Act, 2017 made vide Finance Act, 2023. Accordingly, the States/UTs with legislature may also notify the corresponding amendments in their respective Acts on the same date. The GSTAT would be constituted after these amendments are notified.

6. As per Sec 110(4)(b)(iii) of CGST Act 2017, the Search-cum-Selection Committee for all cases other than Technical Member (State) of a State Bench shall have Chief Secretary of a State to be nominated by the Council as one of the Members. Accordingly, the GST Council may make suitable recommendations in this regard. The list of States is given in Column 2 of **Annexure A.**

7. Further, in case of North Eastern States, it is submitted that there are five High Courts in North East in the States of Tripura, Sikkim, Meghalaya, Manipur and Assam. In case of Arunachal Pradesh and Meghalaya, the GSTAT has been proposed at Guwahati, Assam. It is proposed that it may be clarified that the appeal arising out of GSTAT order in such cases will fall within jurisdiction of the High Court of the State where the taxpayer is located and not in the High Court of Guwahati for clarity of the taxpayers and the department. Meghalaya has also requested for this clarification.

Annexure A

Status of confirmation of Amendments to SGST/UTGST Act corresponding to formation of GSTAT

S.No.	State	Act	Ordinance	No. of Benches proposed	Location of Benches proposed *
1	**Andhra Pradesh**		under process	3	Vijayawada, Visakhapatnam, Tirupati
2	**Arunachal Pradesh**		under process	Common Bench with Guwahati, Assam	Guwahati
3	**Assam**		Passed	1	Guwahati
4	**Bihar**	under process		1	Patna
5	**Chhattisgarh**	under process		2	Raipur, Bilaspur
6	**Delhi**	under process		2	Delhi
7	**Goa**		under process	1	Panaji
8	**Gujarat**		under process	3	Ahmedabad, Surat, Rajkot
9	**Haryana**	under process		2	Gurugram Hisar
10	**Himachal Pradesh**	under process		1	Shimla
11	**Jammu and Kashmir**	under process		1	Jammu & Srinagar on rotational basis
12	**Jharkhand**		under process	1	Ranchi
13	**Karnataka**		under process	3	All three in Bengaluru
14	**Kerala**		under process	3	Thiruvananthapuram, Ernakulam, Kozhikode
15	**Madhya Pradesh**	under process		1	Bhopal
16	**Maharashtra**				
17	**Manipur**		under process		
18	**Meghalaya**		under process	Common Bench with Guwahati, Assam	Guwahati
19	**Mizoram**		under process	1	Aizawl
20	**Nagaland**		under process		
21	**Odisha**	under process		1	Cuttuck

22	**Punjab**	under process		1	Chandigarh/Mohali
23	**Puducherry**	under process		1	Puducherry
24	**Rajasthan**	under process			
25	**Sikkim**	under process		Common Bench with Kolkata	Kolkata
26	**Tamil Nadu**				
27	**Telangana**			2	Both at Hyderabad
28	**Tripura**	under process		1	Agartala
29	**Uttarakhand**		under process	1	Dehradun
30	**Uttar Pradesh**		under process	5	Lucknow , Varanasi, Ghaziabad, Agra and Prayagraj
31	**West Bengal**	under process		2	Both at Kolkata

***** The States of Andhra Pradesh, Chhattisgarh, Gujarat, Kerala, Telangana and Uttar Pradesh have defined the jurisdictions of the Benches based on Division/Zone/Revenue division.

Karnataka and West Bengal have defined the jurisdiction of the Benches as entire state jurisdiction.

Agenda Item 12: Performance Report of Competition Commission of India (CCI) for month of December, 2022 and 4th quarter of the F.Y 2022-23 along with Performance Reports of State Level Screening Committee (SLSC), Standing Committee (SC) and Directorate General of Anti-Profiteering (DGAP) for 3rd quarter and 4th quarter of the F.Y 2022-23 for the information of the Council

The performance report of Anti-profiteering authorities at various levels are as under:

1.1. Performance of Competition Commission of India (CCI):

Opening Balance	No. of Investigation Reports received from DGAP	Disposal of Cases				Closing Balance
		Total Disposal	No. of cases Where Profiteering established	No. of cases Where Profiteering not established	No. of cases referred back to DGAP	
December 2022*						
128	**0**	**0**	**0**	**0**	**0**	**128**
4th Quarter-1st January 2023 to 31st March 2023						
128	**42**	**0**	**0**	**0**	**0**	**170**

*Report of National Anti-Profiteering Authority (NAA) for the month of October and November 2022 were tabled in 48th Meeting of GST Council. In accordance with the Notification No. 23/2022-Central Tax dated 23.11.2022, the mandate of NAA has been transferred to the Competition Commission of India (CCI) w.e.f 1st December, 2022.

1.2 Performance Report of DG of Anti-Profiteering (DGAP):

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	
3rd Quarter- 1st October 2022 to 31st December 2022					
65	**22**	**7**	**6**	**1**	**80***
4th Quarter - 1st January 2023 to 31st March 2023					
80	**0**	**44**	**28**	**16**	**36****

*Out of these 80 cases, 26 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 53 only.

**Out of these 36 cases, 28 cases have been stayed by various Hon'ble High Courts.

- One case has been held up as per direction by NAA.
- Actual pendency of cases in which investigation is under process are 7 only.

1.3 Performance **Report of the Standing Committee (SC) on Anti-profiteering**:

Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases)
3rd Quarter - 1st October, 2022 to 31st December, 2022			
32*	**25**	**0**	**57**
4th Quarter - 1st January, 2023 to 31st March, 2023			
57	**1**	**25**	**33**

***** The closing balance of quarter ending September 2022 and Opening Balance of Quarter ending December 2022 differs by 39 as complaints received in August and September 2022 got time barred due to administrative reasons.

1.4 Performance Report from the State Level Screening Committee (SLSC):

Opening Balance (No. of cases)	Receipt	Disposal		Closing Balance (No. of cases)
		Cases referred to Standing Committee	Cases Rejected	
3rd Quarter- 1st October, 2022 to 31st December, 2022				
94	**91**	**3**	**0**	**182***
4th Quarter -1st January, 2023 to 31st March, 2023				
176**	**137**	**9**	**6**	**298**

***** The Closing Balance of Quarter ending September 2022 and Opening Balance of Quarter ending December 2022 may differ by 1 due to non-receipt of report from State of Jharkhand.

****** The closing balance of Quarter ending December 2022 and Opening Balance of Quarter ending March 2023 may differ by 6 due to non-receipt of report from Andhra Pradesh & Punjab.

2. During these quarters CCI has undertaken the following activities/initiatives-

For the month of December 2022:-

i. Vide Notification No. 23/2022-Central Tax dated 23.11.2022, the mandate of the Authority has been transferred to the Competition Commission of India (CCI) w.e.f 01.12.2022. In the absence of quorum of CCI, no matter was heard in the month of December 2022. At present, total 128 transferred cases related to anti-profiteering transferred matters are now pending for completion of proceedings at the level of CCI.

ii. The erstwhile NAA had passed 380 orders since its inception establishing profiteering of Rs. 2563 Cr. (Approx.) out of which amount of Rs. 563 Cr. (Approx.) has either been passed on to the buyers or deposited in the Consumer Welfare Funds or deposited with the High Courts.

iii. Forty-Four (44) complaints related to anti-profiteering provisions were received during the quarter ending December, 2022 via NAA portal, e-mails and by post. Twenty-Nine (29) complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to the respective Screening Committees/ Standing Committee for further action/examination thereof. Fifteen (15) complaints that related to other GST/enforcement issues were forwarded to the Jurisdictional State & Central GST Commissioners/ Chief Commissioners for necessary action.

For the quarter 01.01.2023 to 31.03.2023:-

iv. At present, 170 cases related to anti-profiteering matters are pending with the CCI.

v. Thirty-One (31) complaints related to anti-profiteering provisions were received during the quarter ending March, 2023 via NAA portal, e-mails and by post. Twelve (12) complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to the respective Screening Committees/ Standing Committee for further action/examination thereof. Nineteen (19) complaints that related to other GST/enforcement issues were forwarded to the Jurisdictional State & Central GST Commissioners/ Chief Commissioners for necessary action.

3. Accordingly, the Performance Report of Competition Commission of India (CCI) for month of December, 2022 and for the 4th quarter of the F.Y 2022-23 along with Performance Reports of SLSC, SC and DGAP on Anti-Profiteering for 3rd quarter and 4th quarter of the F.Y 2022-23 are placed before the GST Council for information.

*****

Confidential

सत्यमेव जयते

Agenda for

50th GST Council Meeting

11th July 2023

Volume-III

माल और सेवा कर परिषद
GOODS AND SERVICES
TAX COUNCIL

GST Council Secretariat New Delhi

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
14th June, 2023

OFFICE MEMORANDUM

Subject: Notice for the 50th Meeting of the GST Council scheduled to be convened on 11th July, 2023.

The undersigned is directed to refer to the subject stated above and to convey that the 50th Meeting of the GST Council will be held on 11th July, 2023 at New Delhi. The schedule of the Meeting is as follows:

• **Tuesday, 11th July, 2023:** 11:00 A.M. onwards

2. In addition, an Officers' Meeting will be held on 10th July, 2023 as per the following schedule:

• **Monday, 10th July, 2023:** 2: 00 P.M. onwards

3. The agenda items and other details for the 50th Meeting of the GST Council will be communicated in due course of time.

4. Keeping in view the logistical constraints, it is requested that participation from each State/UT may be kept limited to two (02) officers in addition to the Hon'ble Member of the GST Council.

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

Sd/-
(Sanjay Malhotra)
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.

TABLE OF CONTENTS

Agenda Item 3(xi)(a): Pilot Project for biometric-based Aadhaar authentication of registration applicants in Puducherry.

On the recommendations of the GST Council in its 48th meeting held on 17.12.2022, it was decided to conduct a pilot in the state of Gujarat for biometric-based Aadhaar authentication of high-risk registration applicants.

2. To this effect, -

(i) Amendments have been made in rule 8(4A), rule 8(5) and rule 9 have been made in the CGST Rules, 2017 as well as in the Gujarat SGST Rules, as below:

- Rule 8(4A) of CGST Rules has been substituted vide notification no. 04/2023-Central Tax dated 31.03.2023 as under:

(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.

Provided that *every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso.*

- rule 8(5) has been amended vide Notification No. 26/2022-CT dated 26.12.2022 as under:

(5) On receipt of an application under sub-rule (4) or sub-rule (4A), as the case maybe, an acknowledgement shall be issued electronically to the applicant in ***FORM GST REG-02****.*

- rule 9 has been amended vide Notification No. 26/2022-CT dated 26.12.2022 as under

(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of seven working days from the date of submission of the application:

Provided *that where –*

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or;

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be granted within thirty days of submission of application, after physical

verification of the place of business in the presence of the said person, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit;

(2) Where the application submitted under rule 8 is found to be deficient, either in terms of any information or any document required to be furnished under the said rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in FORM GST REG-03 within a period of seven working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within a period of seven working days from the date of the receipt of such notice.

***Provided** that where –*

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

*the notice in **FORM GST REG-03** may be issued not later than thirty days from the date of submission of the application.*

…"

However, the said amendments have not been made in the SGST / UTGST Rules of other states/ UTs at present.

(ii) Further, rule 8(4B) has been introduced in CGST Rules only. Subsequently, Notification No. 27/2022-CT dated 26.12.2022 has been issued by the Centre under rule 8(4B) for specifying all states and UTs, except Gujarat, where provisions of rule 8(4A) will not apply.

3.1 Department of Revenue vide their email dated 27.06.2023 has informed that Puducherry has communicated their willingness to conduct pilot for biometric authentication of Aadhaar for high-risk registration applicants in their State also. In order to implement the said biometric-based Aadhaar authentication for registration applicants in Puducherry, the following notifications may be required to be issued:

(i) The State of Puducherry will need to substitute rule 8(4A) of Puducherry SGST Rules on the lines of corresponding substitution of Rule 8(4A) of CGST Rules vide notification no. 04/2023-Central Tax dated 31.03.2023;

(ii) Further, the State of Puducherry will also need to amend rule 8(5) and rule 9 of Puducherry SGST Rules on the lines of corresponding amendments in CGST rules notified vide notification no. 26/2022-CT dated 26.12.2022.

(iii) The Central government may also be required to further amend Notification No. 27/2022-CT dated 26.12.2022 for specifying that the proviso to rule 8(4A) will apply to the State of Puducherry as well.

3.2 Further, it is proposed that the Council may authorize the Chairperson to extend the said pilot project, if required, in other States and/ or Union territories which may be willing to conduct pilot for biometric authentication of Aadhaar for high-risk registration applicants.

4. It is further mentioned that the above amendments in sub-rule (5) of rule 8 and sub-rule (1) and

(2) of rule 9 of CGST Rules vide Notification No. 26/2022-CT dated 26.12.2022, as detailed in Para 2 above, have been made at present only in Gujarat SGST Rules and in CGST Rules but not in SGST Rules of other states. It is proposed to notify the said amendments in sub-rule (5) of rule 8 and sub-rule (1) and (2) of rule 9 in the SGST Rules of the remaining States as well to provide for enabling clause for mandatory physical verification of an applicant who has undergone authentication of Aadhaar and is identified on the common portal based on data analysis and risk parameters.

5. Therefore, the proposals at para 3.1, 3.2 and 4 are placed before the Council for approval.

Agenda Item 3(xv): Goods and Services Tax Appellate Tribunal Appointment and Conditions of Service of President and Members) Rules, 2019

In 49th GST Council meeting held on 17th 18th February, 2023, the recommendation of the Group of Ministers (**GoM)** on the constitution of Goods and Services Tax Appellate Tribunal (GSTAT) was accepted by the Council. Accordingly, the law amendments in CGST Act, 2017 relating to the constitution of GST Appellate Tribunal have been incorporated through Finance Act, 2023 (vide clause 149 to154 of the Finance Act, 2023), by substitution of sections 109, 110 and 114 of CGST Act and by amending sections 117, 118 and 119 of CGST Act.

2. The said provisions of Finance Act, 2023 will be notified in due course in coordination with the states and Union territories once necessary amendments are made in the respective State/ UTGST Acts.

3. Meanwhile, it is proposed that Rules governing appointment and conditions of President and Members of the proposed GST Tribunal may be formulated for enabling smooth constitution and functioning of GST Tribunal. The said Rules may be notified after notification of the above provisions of the Finance Act, 2023.

3.1 The said issue was deliberated by the Law Committee in its meeting held on 31.05.2023. The Law Committee recommended the issuance of GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2023. The draft GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2023 as recommended by the Law Committee are enclosed as **Annexure-A** of this agenda note.

4. Accordingly, the same is placed before GST Council for deliberation and approval please.

****

Annexure-A

Draft Rules as per Finance Act, 2023

MINISTRY OF FINANCE

(Department of Revenue)NOTIFICATION

G.S.R. (E).— In exercise of the powers conferred by section 110 of the Central Goods And Services Tax Act, 2017 (12 of 2017) read with section 164 of the said Act, the Central Government, in supersession of the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2019, hereby makes the following rules, namely:-

CHAPTER I PRELIMINARY

1. Short title, commencement and application.—

(1) These rules may be called the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023.

(2) Save as provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

(3) These rules shall apply to the President, Judicial Member, Technical Member (Centre) and Technical Member (State) of the Principal Bench and State Bench of Goods and Services Tax Appellate Tribunal.

2. Definitions.

In these rules, unless the context otherwise requires, —

(a) "Act" means the Central Goods And Services Tax Act, 2017 (12 of 2017);

(b) "Committee" means the Search-cum-Selection Committee constituted under clause (a) of sub-section 4 of section 110 of the Act for Technical Member (State) of the State Bench or the Search-cum-Selection Committee constituted under clause (b) of sub-section 4 of section 110 of the Act for President and other Members.

(c) "Form" means a Form appended to these rules;

(d) "Member" means a Technical Member (Centre) or Technical Member (State) or Judicial Member of the Goods and Services Tax Appellate Tribunal;

(e) "section" means a section of the Act;

(f) "Tribunal" means Goods and Services Tax Appellate Tribunal as established under section 109 of the Act.

CHAPTER II
APPOINTMENT OF PRESIDENT AND MEMBER

3. Selection for posts of President and Members—

(1) The Committee shall determine its own procedure for making recommendation.

(2) The Committee may cause a vacancy circular to be issued through the Member-Secretary, giving details of the posts of Members proposed to be filled up, including the following—

a. number of existing and anticipated vacancies;

b. qualifications;

c. salary and allowances;

d. format for application; and

e. last date for filing of applications,

in Form-I after making such modifications as may be deemed fit by the Committee.

(3) The Committee shall scrutinise, or cause to be scrutinised, every application received in response to the circular, against the qualifications and may shortlist such number of eligible candidates for personal interaction as it may deem fit.

(4) For the post of President, the Committee may, either cause a vacancy circular to be issued and call for applications or search for suitable persons eligible for appointment and make an assessment for selection to the post ofPresident.

(5) The Committee shall make its recommendations based on the overall assessment of eligible candidates including assessment through the personal interaction after taking into account the suitability, record of past performance, integrity as well as adjudicating experience keeping in view the requirements of the Tribunal and shall recommend a panel of two names for every post for which selection is being done in accordance with the provisions ofsub – section (6) of section 110 of the Act.

4. Selection for re - appointment.— (1) An application for re-appointment shall be considered in the same manner asthat for the original appointment, preferably, alongwith all the persons shortlisted in response to the vacancy circularor otherwise.

(2) While making its assessment for suitability to a post, the Committee shall give additional weightage to the persons seeking re-appointment for their experience in the Tribunal and while doing so, shall take into account, the performance of the person while working as a President or Member in the Tribunal.

5. Medical fitness of President and Members.—

(1) No person shall be appointed **as President, Judicial Member or Technical Member (Centre)** of the Principal Bench or the State Bench of the Tribunal or as **Technical Member (State)** of the Principal Bench unless he is declared medically fit by an authority specified by the Central Government in this behalf.

(2) No person shall be appointed **as Technical Member (State)** of the State Bench of the Tribunal unless he is declared medically fit by an authority specified in this behalf by the State in which the said State Bench is located.

6. Retirement from parent service on appointment as President or Member.— (1) Where, the person appointed as President or Member is a serving Judge of the Supreme Court or a High Court or a serving Member of an organised Service, he shall either resign or obtain voluntary retirement before joining the Tribunal.

CHAPTER III
RESIGNATION OR REMOVAL OF PRESIDENT OR MEMBER

7. Resignation.— President or Member may, by writing under his hand addressed to the Central Government, resign from his office at any time:
Provided that the President or Member shall, unless he is permitted by the Central Government to relinquish office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice by the Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

8.Procedure for inquiry into complaints.—

(1) Where a written complaint alleging any definite charge of the nature referred to in sub-section (12) of section 110 of the Act in respect of President or Member is received by the Central Government, it shall make a preliminary scrutiny of such complaint.

(2) Where, on preliminary scrutiny, the Central Government is of the opinion that there are reasonable grounds for making an inquiry into the truth of any allegation referred to in sub-rule (1), it shall make a reference to the concerned Committee.

(3) The said Committee shall conduct an inquiry or cause an inquiry to be conducted by a person who is, or has been, a -

(a) Judge of Supreme Court or Chief Justice of a High Court, where the inquiry is against President; or

(b) Judge of a High Court, where the inquiry is against a Member.

(4) The inquiry shall be completed within such time or such further time as may be specified by the Central Government preferably within six months.

(5) After the conclusion of the inquiry, the Committee shall submit its report to the Central Government stating therein its findings and the reasons thereof on each of the charges separately with such observations on the whole case as it may think fit.

(6) The Committee shall not be bound by the procedure laid down by the Code of Civil Procedure,1908 (5 of 1908) but shall be guided by the principles of natural justice and shall have power to regulate its own procedure, including the fixing of date, place and time of its inquiry.

CHAPTER IV

SALARY AND ALLOWANCES

9. Salary. — (1) The President of the Tribunal shall, be paid a salary of Rs. two lakh fifty thousand (fixed) per month.

(2) The Member shall be paid a salary of Rs. two lakh twenty- five thousand per month.

(3) In case, a person appointed as the President, or Member, is in receipt of any pension, the pay of such person shall be reduced by the gross amount of pension drawn by him.

10. Allowances.— (1) The President and Members shall be entitled to draw allowances and benefits as areadmissible to a Government of India officer holding Group 'A' post carrying the same pay.

(2) Notwithstanding anything contained in sub-rule (1), the President or Members shall have option to avail of accommodation to be provided by the Central Government as per the rules for the time being in force or shall be eligible for reimbursement of house rent subject to a limit of -

(a) one lakh fifty thousand rupees per month in case of President of the Tribunal; and

(b) one lakh twenty-five thousand rupees per month in case of Members of the Tribunal.

11.Transport allowance.— The President, or Members shall be entitled to the facility of staff car for journeys for official and private purposes in accordance with the facilities as are admissible to a Government of India officer holding Group 'A' post carrying the same pay as per the provisions of Staff Car Rules.

CHAPTER V
PENSION, PROVIDENT FUND, GRATUITY AND LEAVE

12. Pension, Provident Fund and Gratuity.— Pension, Provident Fund and gratuity shall not be admissible for the service rendered in the Tribunal**.**

13.Leave. (1) The President or Member shall be entitled to thirty days of earned leave for every year of service.

(2) Casual Leave not exceeding eight days may be granted to the President or a Member in a calendar year.

(3) The payment of leave salary during leave shall be governed by rule 40 of the Central Civil Services (Leave) Rules, 1972.

(4) The President or Member shall be entitled to encashment of leave in respect of the earned Leave standing to his credit, subject to the condition that maximum leave encashment, including the amount received at the time of retirement from previous service shall not in any case exceed the prescribed limit under the Central Civil Service (Leave) Rules,1972.

(5) Leave sanctioning authority for-

(a) Member, shall be the President;

(b) President or Member in case of absence of President, shall be the Central Government.

(6) The Central Government shall be the sanctioning authority for foreign travel to the President and Members.

CHAPTER VI
POWERS OF PRESIDENT AND VICE PRESIDENT

14. Powers of President.- The President shall exercise the powers of Head of the Department for the purpose of:-

(a) Delegation of Financial Power Rules, 1978;

(b) General Financial Rules, 2017; and

(c) Fundamental Rules and Supplementary Rules.

(d) CCS (CCA) Rules, 1965

15. Powers of Vice-President: - The Vice-President shall exercise the powers of the President provided under section 114 of the Act for the relevant State Benches for the purpose of:-

(a) Allocation of appeals amongst members within a bench under

his jurisdiction.

(b) Deciding the appeals to be heard by Single Member as per provisions of the Act.

(c) Transfer of appeals amongst the State Benches within his jurisdiction.

(d) Refer cases under clause (a) of sub-section (9) of Section 109 of the Act to a Member in a State Bench within his jurisdiction.

(e) Such other administrative and financial powers as may be assigned by the President by a general or special order.

CHAPTER VII MISCELLANEOUS

16.Declaration of Financial and other Interests.— The President or the Member shall, before entering upon his office, declare his assets, and his liabilities and financial and other interests.

17. Other conditions of service.— (1)The terms and conditions of service of a President or Member with respect to which no express provision has been made in these rules, shall be such as are admissible to a Government of India officer holding Group 'A' post carrying the same pay.

(2) The President, or Member shall not undertake any arbitration assignment while functioning in these capacities in the Tribunals.

(3) The President, or Member of the Tribunal, shall not, for a period of two years from the date on which theycease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal:

Provided that nothing contained in this rule shall apply to any employment under the Central Government ora State Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

18.Oath of office and secrecy.— Every person appointed to be the President, or Member shall, before entering upon his office, make and subscribe an oath of office and secrecy in Form II and Form III annexed to these rules.

19.Power to relax:- Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, on the recommendations of the Council, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

20.Interpretation.- If any question arises relating to the interpretation of these rules, the decision of the Central Government thereon, on the recommendations of the Council shall be final.

FORM I

(See rule 3)

[Format for vacancy circular including the format for application]

F. No.__.

Government of India

Ministry of _____

Department of _____. Room No._____. .

New Delhi-110001

Dated, the _____

*****

Vacancy Circular

Subject: - Selection for the posts of President/Member in ……..Tribunal-reg.

*****

1. **Tribunal: -** The Goods and Services Tax Appellate Tribunal is an Appellate Authority established under the Central Goods And Services Tax Act, 2017 to hear various appeals under the Act, .Principal Bench is situated at New Delhi and its state Benches are situated at .A Member, upon selection, may be posted at any of these places.

2. **Vacancy**: - Applications are being invited for the following existing and_____ anticipated vacancies:

Post	Place	Date of Vacancy

3. **Qualification:**- The qualifications, eligibility, salary and other terms and conditions of the appointment of a candidate will be governed by the provisions of the of Central Goods And Services Tax Act, 2017 and Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023.

4. Procedure for selection: - The Search-Cum-Selection Committee constituted under the clause (a) of sub-section 4 of section 110 for the posts of Technical Member (State) of the State Bench and under clause (b) of sub-section (4) of the said section of Central Goods And Services Tax Act, 2017 for the posts of President and other Members shall recommend names for appointment to the said post/s and shall scrutinise the applications with respect to suitability of application for the posts by giving due weightage to qualification and experience of candidates and shortlist candidates for conducting personal interaction. The final selection will be done on the basis of overall evaluation of candidates done by the Committee based on the qualification, experience and personal interaction.

5. Application Procedure:- Applications by eligible and willing officers are to be submitted through proper channel(wherever applicable) and should be accompanied with (i) bio-data in the proforma at Annexure-I (ii) Certificate to be furnished by the employer/ head of office/ forwarding authority as in Annexure-II (iii) clear photocopies of the up-to-date CR/APAR dossier of the officer containing CR/APARs of at least last five years duly attested by a Group A officer (iv) cadre clearance (v) integrity certificate/clearance from vigilance and disciplinary angle as in Annexure-III (vi) statement giving details of major or minor penalties, if any, imposed on the officer during the last ten years, to the following address, so as to reach this office latest by _____:-

[Name and Address]

Applicants can Log on to https://. to access the home page of the Online Application to apply (wherever applicable).

6. No TA/DA will be admissible to the candidates to be called for interview/interaction. The candidates are required to make own arrangements.

7. Advertisement and Prescribed application form can be downloaded from Ministry's/Tribunals website (name of the website).

8. Any application received after due date or without necessary Annexure as mentioned above will not be entertained.

Wide publicity may be given in all organizations and their field formations to facilitate early and optimum number of application.

(Name of the Signing Officer)

Under Secretary to the Govt. of

India/Director

Annexure-I

PROFORMA

Space for photograph duly signed by candidate

1. Name :

2. Date of Birth :

3. Category(SC/ST/OBC/UR) :

4. Designation/Profession :

5. Contact Details :

	Residential		Official
	Present	Permanent	
Address:			
Mobile/Phone No.			
Email:			

6. Cadre/Service [Wherever applicable] :

7. Educational qualification (in reverse chronological order):

Sl. No.	Name of University/ Equivalent Institution	Degree	Year of passing	Division/ % of marks obtained	Academic Distinction	Subject/ Specialization

8. Work Experience:

8A. For the experience as employee, Employment record in chronological order starting with present Employment, list in reverse:

(a) For the post of Technical Member (Centre) and Technical Member (State) .

Sl. No.	Name & address of employer (Govt./PSU/Ministry/ Department/any other	Designation, Pay or Scale of pay (Pay in Pay Matrix)	Period of Service		Nature of work/ experience*	Whether the said service is Group A or equivalent to Group A
			From	To		

* Please specify whether the said work involves administration of an existing law (as defined in clause (48) of section (2) of the Central Goods and Services Tax Act, 2017) or the goods and services tax in the Central Government in respect of post of Technical Member (Centre) or whether the work involves administration of an existing law or the goods and services tax or in the field of finance and taxation in the State Government in respect of post of Technical Member (State).

Also specify whether the said works involves judicial/ quasi-judicial functions.

(b) For the post of President and Judicial Member

Sl. No.	Name & address of employer (Govt./Court/any other	Designation, Pay or Scale of pay (Pay in Pay Matrix)	Period of Service		Nature of work/ experience*
			From	To	

- Please specify whether the said work involves Judicial or Quasi-Judicial /Criminal/Civil /Taxation /Company Affairs/or any other as may be applicable.

9. Write up on adjudicating experience of the applicant (200 words) [Wherever applicable] :

10. Mention :

a. Whether minimum three years of experience is there in the administration of an existing law or goods and services tax in the Central Government for the post of Technical Member (Centre) : (Yes/No. If yes, provide details thereof)

b.Whether minimum three years of experience is there in the administration of an existing law or goods and services tax or in the field of finance and taxation in the State Government for the post of Technical Member (State) : (Yes/No. If yes, provide details thereof)

c. Any experience in handling such cases involving interpretation of goods and services tax law or an existing law for the posts of Judicial Member : (Brief Writeup)

12. Write up on 05, major achievement : (200 words each)

13. Awards/honours/Publications, if any :

14. Affiliation with the professional bodies/ :

Institutions/societies/or any other body

Including political party.

15. Additional information, if any, which :

You would like to mention in support of the application for the post.

DECLARATION

1. I certify that the foregoing information is correct and complete to the best of knowledge and belief and nothing has been concealed/distorted. If at any time I found to have concealed/distorted any material information; my appointment shall be liable to summary termination without notice.

2. I shall not withdraw my candidature after the meeting of the Selection Committee.

3. I shall not decline the appointment, if selected for appointment by the ACC.

4. I shall join within 30 days from the date of issue of order of appointment.

5. I am aware that in case I violate any of the conditions mentioned at SI.No.2 to 4, the Government of India is likely to debar me for a period of three years for consideration for appointment outside the cadre and in any Autonomous Body/Statutory Body/Regulatory Body.

Place : Date:

Signature of the candidate

Annexure- II

CERTIFICATE TO BE FURNISHED BY THE EMPLOYER/HEAD OFOFFICE/FORWARDING AUTHOTITY

1. Certified that the particular furnished by Shri/Smt/Kum are correct and he/she possesses educational qualifications and experience mentioned in Annexure-I.

2. It is also certified that there is no vigilance/ disciplinary case either pending or being contemplated against him/her and vigilance clearance issued by competent Authority in the enclosed Annexure (III).

3. His/her integrity is certified.

4. No major or minor penalty was imposed on Shri/Smt/Kum during the last 10 years period.

5. The up-to-date attested Photostate copies of ACR/APAR of last 5years (each Photostat copy of ACR/APAR should be attested) in respect of Shri/Smt/Kum---------- are enclosed herewith.

Seal & Signature of the cadre controlling Authority

Annexure-III

PARTICULARS OF THE OFFICERS FOR WHOM VIGILANCE CLEARANCE IS BEING SOUGHT

(To be furnished and signed by the competent authority or HOD)

1. Name of the Officer (in full) :
2. Father's name :
3. Date of Birth :
4. Date of Retirement :
5. Date of entry into service
6. Service to which the officer belongs : including batch /year/ cadre etc. , wherever applicable
7. Positions held (During ten preceding years):

S. No	Organisation (name in full)	Designation & Place of Posting	Administrative/ Nodal Ministry/ Department concerned(in case of officers of PSUs etc.)	From	To

8. Whether the officer has been placed on : the agreed list or list of Officer of Doubtful Integrity (if yes, details to be given)

9. Whether any allegation of misconduct : Involving vigilance angle was examined against the officer during the last 10 Years and if so with what result (*)

10. Whether any punishment was awarded to : the officer during the last 10 years and if so, the date of imposition and details of penalty (*)

11. Is any disciplinary/ criminal proceedings: or charge sheet pending against the officer as on date (if so, details to be furnished)

12. Is any action contemplated against the : Officer as on date (if so, details to be furnished (*)

(*) If vigilance clearance had been obtained in the past, the information may be provided for the period thereafter,

Date:

(NAME AND SIGNATURE)

FORM II

(See rule 17)

Form of Oath of Office for President/ Member

I, A. B., having been appointed as President/Member of the Goods and Service Tax Appellate Tribunal, do solemnly affirm/do swear inthe name of God that I will faithfully and conscientiously discharge my duties as the President/ Member of the Appellate Tribunal to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will.

FORM III

(See rule 17)

Form of Oath of Secrecy for President/Member

I, A. B., having been appointed as the President/Member of the Goods and Service Tax Appellate Tribunal, do solemnly affirm/do swearin the name of God that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as President/ Member of the Appellate Tribunal except as may be required for the due discharge of my duties as the President/Member.

Agenda Item 3(xvi): Seeking clarity on taxability of share capital held in subsidiary company by the parent company

Representation has been received from trade to clarify whether the holding of shares in a subsidiary company by the parent company will be treated as 'supply of service' under GST and will be taxed accordingly or whether such transaction is not a supply.

2. Some of the field formations/ investigative agencies are relying on the SAC code 997171- "*services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest"*, and are demanding GST on "share capital held in subsidiary company' under forward charge basis and on 'share capital held by a foreign holding company', on reverse charge basis by classifying the said activity as an import of service by invoking residual entry 15 of Notification 11/2017 CGST (rate). They have taken a view that equity capital is to be treated as a financial asset which is in the form of an investment made with a purpose to have control over the subsidiary company. Therefore, it is being claimed that the activity of holding securities is nothing but an investment made by holding company to have control over subsidiary company and therefore, it is a supply of "services of holding securities in subsidiary company" by the holding company to the subsidiary company.

3. Trade, on the other hand, has represented that a subsidiary company is controlled by the holding company by holding equity shares to protect the interests of the parent/ holding company and to regulate the capital infused by them. Such a control is not exercised with an intention to benefit the subsidiary company. It has also been represented that mere controlling interest does not qualify the said activity to be termed as a taxable 'supply of service' as per the SAC code 997171 and therefore, merely by holding equity shares in a subsidiary company, the parent company cannot be said to be rendering to the subsidiary company.

4. **RELEVANT GST PROVISIONS:**

4.1 Various definitions in CGST Act, 2017 to be referred in the Agenda Note are detailed below:

- **Section 2(52)** "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(102)** "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

[**Explanation**.- For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;]

- ***" Section 7. Scope of supply.-***

(1) For the purposes of this Act, the expression - "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence,

rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation *.-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]*

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(d)[****].

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods."

4.2 Definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956 is as below:

"*securities" include— (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate*;

……"

4.3 Further, subsidiary company has been defined in sub-section 87 of section 2 of Companies Act, 2013. The same is reproduced below for reference:

"*subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—*

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression "company" includes any body corporate;

(d)"layer" in relation to a holding company means its subsidiary or subsidiaries;"

5. **Analysis of the Issue:**

5.1 Under GST law, supply is the relevant taxable event for levying tax. For an activity/transaction to be liable to GST, existence of 'supply' as defined under section 7 of CGST Act, 2017 should be there.

5.2 Section 7 of CGST Act, 2017 defines supply to mean *'all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.'* Therefore, it needs to be established that the activity which is to be considered as a supply must be done in course or furtherance of business and there should be a consideration made for the same. Further, Schedule I lists certain activities which are to be treated as a supply even if they are made without any consideration. Entry 2 of Schedule I of CGST Act, 2017 mentions supply of goods or services or both between related persons or distinct persons as a supply even if the same is made without any consideration. Further, Entry 4 of the said Schedule deems import of service by a person from a related person/ company or any of his other establishments outside India as an import of service even if rendered without any consideration, if the said transaction is in course or furtherance of business.

5.3 Further, securities under GST Law is considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST Act, 2017 and in terms of definitions of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.

5.4 This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of securities in itself is neither a supply of goods nor a supply of services. However, as per Explanation to definition of services "under clause 102 of section 2 of CGST Act", facilitating or arranging transactions in securities may be treated as supply of services. Similarly, activity of lending securities where it provides the right of ownership to third party on payment of certain consideration can be treated as a supply of services. However, purchase and holding of securities/share of the subsidiary company does not in itself constitute a supply of services. Further, mere holding majority shares by holding company of a subsidiary company does not in itself imply that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "*the*

services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest."

5.5 For a transaction/activity to be treated as supply of services there must be a supply as defined under section 7 of CGST Act. Further, if a view is taken that holding shares by a company in its subsidiary company constitutes supply of services, as SAC entry 997171 mentions, then it will also emerge as to whether holding shares of any company even without holding a majority shares will also be considered as supply of services, as nature of transaction essentially remains the same. If such a view is taken then, in effect, every purchase of securities will be deemed as supply of services as every such purchase will lead to holding of securities of the said company by the purchaser. This may be in contradiction with the definition of supply under section 7 of CGST Act read with section 2 of the said Act in terms of definition of goods under clause (52) and definition of services under clause (102) of the said section and therefore will not be tenable.

5.6 Therefore, it appears from the above provisions that the holding of shares in a company per se cannot be treated as a supply of services by a holding company to its subsidiary company.

6. Law Committee deliberated on the issue in its meeting held on 28.06.2023 and recommended that the issue may be clarified through a circular, specifying that mere holding of securities of a subsidiary company by a holding company, whether located in India or abroad, cannot be treated as a supply of services and therefore cannot be taxed under GST.

7. The draft circular in this regard as recommended by Law Committee is enclosed at **Annexure-A** to this agenda note.

8. Accordingly, the Agenda is placed before the GST Council for deliberation and approval.

******

ANNEXURE-A

DRAFT

Circular No. XX/XX/2023-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 XXXXXX, 2023

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 pertaining to GST-reg.

Representations have been received from the trade and field formations seeking clarification on certain issues whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' under GST and will be taxed accordingly or whether such transaction is not a supply.

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 bysection 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	**Issue**	**Clarification**
Taxability of share capital held in subsidiary company by the parent company		
1.	Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not.	Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST Act and the definition of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956. This implies that the securities held by the holding

		company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "*the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.",* unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

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

3. 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(xvii): Amendment in 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 provisions of the CGST Rules, some changes in the FORMS under CGST Rules have also been recommended by the Law Committee. These changes are discussed below:

I. Omission of clause (c) of Explanation (1) to Rule 43

1.1 As per Sr. No 19B of Exemption Notification No. 12/2017 Central Tax (Rate) dated 28th June 2017, as amended from time to time, services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India was an exempt supply till 30.09.2022. Relevant extract of the said entry in the notification for ease of reference is as under -

Sl. No.	Chapter, Section, Heading,	Description of Services	Rate	Condition
19B	**Heading 9965**	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.	Nil	Nothing contained in this serial number shall apply after the 30th day of September, 2022

1.2 However, this exemption has not been extended after 30.09.2022. As a result, the said service has become taxable after 30.09.2022. Normally, in the case when outward supply is exempt, the supplier needs to reverse the common ITC in accordance with rule 42 or rule 43 of CGST Rules. Since, the above service is not an exempt supply w.e.f 01.10.2022, reversal of ITC in respect of supply of the said services is not required w.e.f. 01.10.2022. Further, there are certain exclusion in the Explanation to Rule 43 of CGST Rules like the abovementioned services whose value of supply was excluded from the value of exempt supplies.

1.3 The Clause (c) of Explanation 1 to Rule 43 of CGST Rules is reproduced as under:
Explanation 1: -For the purposes of Rule 42 and this Rule, it is hereby clarified that the ggregate value of exempt supplies shall exclude:-
(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.

1.4 Consequent to lapsing of the exemption given vide Entry No. 19B of Exemption Notification No. 12/2017 Central Tax (Rate) dated 28th June 2017, there is a need to omit the said clause (c) of Explanation to Rule 43 of CGST Rules, as supply of aforementioned services is not an exempt supply with effect from 1st October 2022.

1.5 In view of the above, the Law Committee in its meeting held on 10.04.2023 and 11.04.2023 recommended that clause (c) of Explanation (1) at the end of Rule 43 of CGST Rules may be omitted.

II. Amendment in proviso to rule 46(f)

2.1 As per the recommendations of GST Council in its 48th meeting, rule 46 of CGST Rules has been amended vide Notification No. 26/2022 –Central Tax dated 26.12.2022 by adding a proviso to clause (f) of the said rule to provide that where any taxable services is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State of the recipient and the said State address shall be deemed to be the address on record of the recipient.

2.2. However, subsequent to the said amendment, concerns were received from some tax administrations that there may be cases where the supplier may have the information about the State name of the recipient, but may not have the full address and the PIN code of the recipient. In such cases, there may be a possibility that the supplier may declare the place of supply as his own location, due to non-availability of the full address details of recipient. This may lead to loss of revenue for the consumption states. Besides, representations have also been received from some sections of the industry mentioning that in certain services sector, exact address of the recipient may not be feasible for the supplier to be collected due to peculiar nature of the supply, and only name of the State of the recipient may be collected and recorded. Accordingly, request has been made to not insist of full address details of the recipient and only the name of State of the recipient may be sufficient to be provided in the tax invoice.

2.3 The matter was deliberated by the Law Committee in its meeting held on 10.04.2023 & 11.04.2023. Law Committee recommended that proviso to rule 46(f) of CGST Rules may be amended to provide that the tax invoice shall contain the name of the State of the recipient and the name and address of the recipient along with its PIN code may not be mandatory to be declared on the tax invoice. Further, the State of the recipient shall be deemed to be the address on record of the recipient. Accordingly, the Law Committee recommended the following amendment in proviso to rule 46(f) pf CGST Rules, as shown, in red color:

Rule 46(f)
46. Tax invoice.- ….. (f)…. Provided that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the ~~name and address of the recipient along with its PIN code and the~~ name of the State of the recipient and the same ~~said State address~~ shall be deemed to be the address on record of the recipient. (g)….

III. Amendment in rule 64 and FORM GSTR-5A

3.1 **FORM GSTR-5A** presently covers details of supplies of online information and database access or retrieval (OIDAR) services by a person located outside India made to non-taxable persons in India. The said form does not cover the details of supplies of online information and database access or retrieval services by a person located outside India made to a registered person in India. A registered person other than non-taxable online recipient located in India receiving online information and database access or retrieval services from a person located outside India is required to pay tax on such receipt of services on reverse charge basis as per Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017. It is suggested that if the details of supplies made by the said OIDAR service provider to registered persons in India other than non-taxable online recipient can also be captured in **FORM GSTR-5A**, it can help in ensuring tax compliance by the said registered persons paying tax on reverse charge basis. Accordingly, it is proposed that format of **FORM GSTR-5A** be modified so as to also include details of supplies made by the OIDAR service provider located outside India to registered persons other than non-taxable online recipient in India.

3.2 Rule 64 of CGST Rules provides that every registered person providing online information and data base access or retrieval services from a place outside India to a person in India other than a registered person shall file return in **FORM GSTR-5A** on or before the twentieth day of the month succeeding the calendar month or part thereof. Since the proposed **FORM GSTR-5A** will also include details of supplies made by OIDAR services provider to registered persons in India, amendment is required in the said rule so as to prescribe that every registered person providing online information and data base access or retrieval services from a place outside India to non-taxable online recipient or to a registered person(other than a non-taxable online recipient) in India shall file return in **FORM GSTR-5A**.

3.3 Accordingly, Law Committee in its meeting held on 10.04.2023 & 11.04.2023 and 28.06.2023 has recommended amendment in rule 64 and in **FORM GSTR-5A** so as to also include details of supplies made by the OIDAR service provider located outside India to registered persons other than non-taxable online recipient in India. The proposed amendment in rule 64 and **FORM GSTR-5A** is shown, in red color, as below:

Rule 64
Rule 64. Form and manner of submission of return by persons providing online information and data base access or retrieval services.- Every registered person providing online information and data base access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), ~~person in India other than~~ or to a registered person other than a non-taxable online recipient, shall file return in **FORM GSTR-5A** on or before the twentieth day of the month succeeding the calendar month or part thereof.

FORM GSTR-5A

[See rule 64]

Details of supplies of online information and database access or retrieval services by a person located outside India made to non-taxable ~~persons~~ online recipient (as defined in Integrated Goods and Services Tax Act, 2017) and to registered persons in India

1. GSTIN of the supplier-

2. (a) Legal name of the registered person -

(b) Trade name, if any -

3. Name of the Authorised representative in India filing the return –

4. Period: Month - _____ Year –

4(a) ARN:

4(b) Date of ARN:

5. Taxable outward supplies made to ~~consumers~~ non-taxable online recipient in India

(Amount in Rupees)

Place of supply (State/UT)	Rate of tax	Taxable value	Integrated tax	Cess
1	2	3	4	5

5A. Amendments to taxable outward supplies to non-taxable ~~persons~~ online recipient in India

(Amount in Rupees)

Month	Place of supply (State/UT)	Rate of tax	Taxable value	Integrated tax	Cess
1	2	3	4	5	6

5B. Taxable outward supplies made to registered persons in India, other than non-taxable online recipient, on which tax is to be paid by the said registered persons on reverse charge basis

(Amount in Rupees)

GSTIN	*Taxable Value*
1	*2*

5C. Amendments to the taxable outward supplies made to registered persons in India, other than non-taxable online recipient, on which tax is to be paid by the said registered persons on reverse charge basis

(Amount in Rupees)

Month	*Original GSTIN*	*Revised GSTIN*	*Taxable value*
1	*2*	*3*	*4*

6. Calculation of interest, or any other amount

(Amount in Rupees)

Sr. No	Description	Place of supply (State/UT)	Amount due (Interest/ Other)	
			Integrated tax	Cess
1	2	3	4	5
1.	Interest			
2.	Others			
	Total			

7. Tax, interest, and any other amount payable and paid

(Amount in Rupees)

Sr. No.	Description	Amount payable		Debit entry no.	Amount paid	
		Integrated Tax	Cess		Integrated Tax	Cess
1	2	3	4	5	6	7
1.	Tax Liability (based on Table 5 & 5A)					
2.	Interest (based on Table 6)					
3.	Others (based on Table 6)					

Verification

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.

Signature

Place Name of Authorised Signatory

Date

Designation /Status

IV. Amendment in Rule 89(1):

4.1 Sub-rule (1) of rule 89 of the CGST Rules prescribes the manner of filing of Refund application for claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or any tax, interest, penalty, fees or any other amount paid by a person, other than refund of integrated tax paid on goods exported out of India.

4.2 3rd proviso to sub-rule (1) of rule 89 provides that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 of CGST Act, 2017 at the time of registration, shall be claimed in the last return required to be furnished by him. However, the Form GSTR- 3B for return does not provide any option for claiming refund.

4.3 In this regard, reference is drawn to section 24 of CGST Act, 2017 which specifies that casual taxable persons and Non-resident taxable persons who are making taxable supply are required to take compulsory registration. Sub-section (2) of section 27 of the Act *ibid* specifies that a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25 of CGST Act, 2017, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. Sub-section (3) of section 27 of CGST Act, 2017 states that the advance tax amount deposited shall be credited to the electronic cash ledger of such person and shall be utilized in the manner provided under section 49 of CGST Act, 2017. Further, Sub-section (6) of Section 49 of the CGST Act, 2017 specifies that the balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the Rules made thereunder may be refunded in accordance with the provisions of section 54 of CGST Act, 2017.

4.4 In view of the provisions mentioned above, it is felt that the balance remaining out of advance tax amount deposited by the casual taxable person is in the nature of excess balance in electronic cash ledger only, which can be claimed as refund of balance in the electronic cash ledger after filing of the last return.

4.5 The Law Committee, in its meeting dated 10.04.2023 & 11.04.2023 deliberated on this issue and recommended that 3rd proviso to sub-rule (1) of rule 89 may be amended (shown in red color), as below:

Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1) Any person, except the persons covered under notification issued under section 55 claiming refund of ……..
[****]
Provided that in respect of supplies to a Special Economic Zone unit or …..
Provided further that in respect of supplies regarded as deemed exports, …..
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~~only after the last return required to be furnished by him has been so furnished.

V. Amendment in Rule 89(2)(k):

5.1 In terms of clause (e) of sub-section (8) of section 54 of the CGST Act, 2017, a registered taxpayer can file an application for refund of excess payment of tax and interest, if any, or any other amount paid by him if he has not passed on the incidence of such tax and interest to any other person.

5.2 In terms of **clause (k) of sub-rule (2) of Rule 89** of CGST Rules, **Statement 7 as appended to FORM GST RFD-01 is required to be submitted along with the application for refund which is made under the category 'Excess Payment of Tax'.**

5.3 The format of Statement -7 is as follows:-

Statement -7 [rule89 (2)(k)]

Refund Type: Excess payment of tax, if any in case of last return filed.

(Amount in Rs.)

Tax Period	ARN of Return	Date of Filing Return	Tax Payable			
			Integrated Tax	Central Tax	State Tax	Cess
1	2	3	4	5	6	7

5.4 It appears that Statement -7 is designed for excess payment of tax made in a particular return. It has been reported by some tax administrations that **this restricts a taxpayer** from filing the claim of refund under the category 'Excess Payment of Tax' for any amount of excess payment of tax which is not relatable to a particular return period or that of excess payment of interest, penalty or late fee. However, it is possible that **excess payment may happen under various circumstances** some of which are illustrated below:

a) Excess payment can be detected at the time of reconciliation of accounts and it might be relatable to multiple return periods without clearly being attributable to any particular return.

b) Excess payment may be made through FORM GST DRC-03, FORM GST DRC-07 and FORM GST CMP-08.

5.5 In such cases, it is being reported that a taxpayer cannot claim refund under the category "Excess Payment of Tax" as the related particulars cannot be furnished in Statement-7 of FORM GST RFD-01 and they end up claiming the same under the category "Any Other".

5.6 However, circumstances under which refunds can be claimed under the category "Any Other" is clarified in the circulars issued in this regard and the same are specific in nature which do not cover this condition.

5.7 Furthermore, though sub-section (8) of section 54 provides for refund of excess payment of tax and interest, if any, or any other amount paid, statement as required in terms of clause (k) of sub-rule (2) of Rule 89 restricts the same to tax only necessitating alignment of the same with the aforesaid sub-section.

5.8 In view of the above, Law Committee, in its meeting held on 14.06.2023 &15.06.2023 deliberated on this issue and recommended that clause (k) of sub-rule (2) of Rule 89 may be amended (shown in red colour), as below. Further, Statement 7 in FORM GST RFD 01 may also be amended to incorporate the said rule change.

Rule 89(2): The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-
(a) …;
(b) …;
…
"(k) a statement showing the details of the amount of claim on account of excess payment of tax ***and interest, if any, or any other amount paid***;"

Statement -7 [rule89 (2)(k)]

Refund Type: Excess payment of tax, if any in case of last return filed.

(Amount in Rs.)

~~Tax Period~~	~~ARN of Return~~	~~Date of Filing Return~~	~~Tax Payable~~			
			~~Integrated Tax~~	~~Central Tax~~	~~State Tax~~	~~Cess~~
~~1~~	~~2~~	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~

Sl. No.	Document/Invoice Details			Details of amount paid						Details of refund claimed					
	Type of document	ARN No.	Date	Integrated Tax	Central Tax	State/ UT Tax	Cess	Interest	Any other (please specify)	Integrated Tax	Central Tax	State/ UT Tax	Cess	Interest	Any other (please specify)
1	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17

VI. Amendment in Rule 96(2):

6.1 Rule 96 of the CGST Rules, 2017 prescribes the manner of processing of Refund of integrated tax paid on goods [or services] exported out of India. Sub-rule (2) of rule 96 prescribes the process of transmission of export data from common portal to system designated by the Customs for further processing of the said refund application.

6.2 1st Proviso to Rule 96(2) provides that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of CGST Act, 2017, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs. 2nd Proviso to Rule 96(2) of CGST Rules provides further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.

6.3 It may be observed that the option to file the export details of Table 6A of FORM GSTR 1 separately was made available initially during the period when filing of FORM GSTR-1 was delayed on the portal and filing of FORM GSTR-1 was not mandatory before filing of return in FORM GSTR-3B. However, now concept of sequential filling of Return has been introduced. Section 37 & section 39 of CGST Act, 2017 have been amended vide Notification No. 18/2022–Central Tax dated 28th September, 2022 with effect from 01 October, 2022. According to section 37(4) of CGST Act, 2017, a taxpayer shall not be allowed to file FORM GSTR-1 if previous FORM GSTR-1 is not filed and as per section 39(10) of the said Act, a taxpayer shall not be allowed to file return in FORM GSTR-3B if FORM GSTR-1 for the same tax period has not been filed.

6.4 Hence, Law Committee observed that 1st and 2nd proviso to sub-rule (2) of rule 96 do not serve any purpose now after the said amendments in CGST Act and hence have become redundant. Accordingly, the Law Committee in its meeting dated 10.04.2023 and 11.04.2023 recommended omission (shown in red colour) of Proviso 1 and Proviso 2 to rule 96(2) of CGST Rules, as below:

Rule 96 (2): The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

~~*Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:*~~

~~*Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.*~~

VII. Amendment in rule 108 and rule 109

7.1 In terms of sub-section (1) of section 107 of the CGST Act, 2017, any person aggrieved by any decision or order passed by an adjudicating authority may appeal to the concerned appellate authority within three months from the date of communication of the said decision or order to such person. Similar provision exists under sub-section (2) of section 107 of CGST Act to provide for filing appeal by an officer authorised by the Commissioner to the appellate authority within six months from the date of communication of the said decision or order.

7.2 In terms of sub-rule (1) of rule 108 of the CGST Rules, a doubt emerges whether an appeal under section 107 can be filed either electronically or manually, at the liberty of the Appellant. The aforesaid formulation has remained un-amended since the inception of GST in 2017. This was the time when the functionalities relating to registration, returns, payments and refunds had been rolled out on the common portal and the other processes/functionalities like Appeal, Advance Ruling, Scrutiny, etc. were still being developed. Thus, it was felt that, for instance, where the filing of an Appeal becomes necessary, an alternative mechanism as notified by the Commissioner may also be provided.

7.3 The issue was deliberated by the Law Committee in its meeting held on 10th/ 11th April, 2023, 31.05.2023 and 28.06.2023. The Law Committee noted that the rule provides mainly for filing of appeals, electronically, on the portal. Only in the cases where the Commissioner so notifies, the appeal can be filed in a mode other than electronically on the portal. However, as some of the Courts are taking a view that as per the present wording of rule 108 of CGST Rules, manual filing of appeals may also be considered as a default route of filing appeal under section 107 of CGST Act, there may be a requirement of the amendment in rule 108 and rule 109 of CGST Rules to provide clearly under what circumstances manual appeals may be filed under section 107 of CGST Act.

7.4 The Law Committee accordingly recommended amendment in rule 108 and rule 109 of CGST Rules (amendment shown in red color) by inserting a proviso in both of the said rules for filing appeal manually in certain specified circumstances.

Rule 108: Appeal to the Appellate Authority

(1) *An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, ~~either~~ electronically ~~or otherwise as may be notified by the Commissioner~~, and a provisional acknowledgement shall be issued to the appellant immediately:*

Provided that an appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, where the Commissioner so notifies, or where the same cannot be filed electronically either due to non-availability of the decision or order to be appealed against on the common portal or due to non-availability of the facility on the common portal, and a provisional acknowledgement shall be issued to the appellant immediately.

Rule 109. Application to the Appellate Authority.-

(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be filed in FORM GST APL-03, along with the relevant documents, ~~either~~ electronically ~~or otherwise as may be notified by the Commissioner~~ and a provisional acknowledgment shall be issued to the appellant immediately.

Provided that an appeal to the Appellate Authority may be filed manually in FORM GST APL-03, along with the relevant documents, where the Commissioner so notifies, or where the same cannot be filed electronically either due to non-availability of the decision or order to be appealed against on the common portal or due to non-availability of the facility on the common portal, and a provisional acknowledgement shall be issued to the appellant immediately.

VIII. GSTR-3A notice for non-filing of Annual Return in FORM GSTR-9 or FORM GSTR-9A:

8.1 Section 46 of the CGST Act, 2017 read with Rule 68 of CGST Rules, 2017 requires issuance of a notice in FORM GSTR-3A to a registered person who fails to furnish return under Section 39 or Section 44 or Section 45 or Section 52 requiring him to furnish such return within fifteen days.

8.2 While FORM GSTR-3A has provision to issue notice to return defaulter as well as defaulters of final return, there is no provision in it to issue notice to defaulters of Annual returns.

8.3 In view of the same, the Law Committee in its meetings held on 15.03.2023, 10.04.2023 and 11.04.2023 recommended suitable amendment in **FORM GSTR-3A** (highlighted in red) for issuance of notice to the registered taxpayer for their failure to furnish Annual Return in FORM GSTR-9 or FORM GSTR-9A.

FORM GSTR – 3A

[See rule 68]

Reference No: Date:

To
_____ GSTIN
---------- Name
_____ Address

Notice to return defaulter u/s 46 for not filing return

Tax Period - Type of Return –

Being a registered taxpayer, you are required to furnish return for the supplies made or received and to discharge resultant tax liability for the aforesaid tax period by due date. It has been noticed that you have not filed the said return till date.

2. You are, therefore, requested to furnish the said return within 15 days failing which the [tax liability may be assessed u/s 62 of the Act, based on the relevant material available with this office. Please note that in addition to tax so assessed, you will also be liable to pay interest and penalty as per provisions of the Act.

3. Please note that no further communication will be issued for assessing the liability.

4. The notice shall be deemed to have been withdrawn in case the return referred above, is filed by you before issue of the assessment order.

5. This is a system generated notice and does not require signature.

Or

Notice to return defaulter u/s 46 for not filing final return upon cancellation of registration

Cancellation order No. – Date ---

Application Reference Number, if any - Date –

Consequent upon applying for surrender of registration or cancellation of your registration for the reasons specified in the order, you were required to submit a final return in form **GSTR-10**as required under section 45 of the Act.

2. It has been noticed that you have not filed the final return by the due date.

3. You are, therefore, requested to furnish the final return as specified under section 45 of the Act within 15 days failing which your tax liability for the aforesaid [tax period may be determined in accordance with the provisions of the Act based on the relevant material available with or gathered by this office. Please note that in addition to tax so assessed, you will also be liable to pay interest as per provisions of the Act.

4. This notice shall be deemed to be withdrawn in case the return is filed by you before issue of the assessment order.

5. This is a system generated notice and does not require signature.

Signature
Name
Designation

Or

Notice to return defaulter u/s 46 for not filing annual return

Type of Return –GSTR-9/GSTR-9A

Financial year-

Being a registered taxpayer, you are required to furnish annual return for the supplies made or received and/or to include self-certified reconciliation statement for the aforesaid financial year by due date. The due date specified for filing annual return for the said financial year is over and it has been noticed that you have not filed the said return till date.

2. You are, therefore, requested to furnish the said return within 15 days failing which appropriate action including imposition of penalty as per law will be taken.

3. This notice shall be deemed to have been withdrawn in case the return referred above, is filed by you before issue of the show cause notice of penalty proceeding.

4. This is a system generated notice and does not require signature.

9. 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(xviii): Proposal to provide a special procedure to file appeal against the orders passed in accordance with the Circular No. 182/14/2022-GST, dated 10.11.2022, pursuant to the directions issued by the Hon'ble Supreme Court in the Union of India v/s Filco Trade Centre Pvt. Ltd – regarding.

The Hon'ble Supreme Court in the Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018 had directed that the common portal be opened for filing prescribed forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months from 01.10.2022 to 30.11.2022 for the aggrieved registered persons. In this regard, reference is also invited to Circular No. 180/12/2022 dated 09.09.2022 vide which guidelines have been issued for the applicants for filing new TRAN-1/TRAN-2 or revising the already filed TRAN-1/TRAN-2 on the common portal, and to Circular No. 182/14/2022-GST dated the 10th of November, 2022 prescribing guidelines to the officers for verifying the Transitional Credit and pass orders accordingly.

2. In light of this, it has been brought to the notice that though several taxpayers, or the Department, intend to file appeal against the orders issued by the proper officers in respect of such claims of transitional credit filed by the registered persons in accordance with the above mentioned directions issued by Hon'ble Supreme Court, there is presently no functionality available on the portal for enabling them to file such appeals. In some cases, time limit for filing appeals under provisions of section 107 of CGST Act, 2017 has already expired or is going to expire shortly.

3. Law Committee in its meetings held on 03.05.2023, 14/15.06.2023 and 28.06.2023 deliberated on the issue and recommended to provide a special procedure for filing of appeals manually against the orders passed in accordance with Circular No. 182/14/2022-GST dated the 10th of November, 2022. A draft notification providing the special procedure to be followed by a person desirous of filing an appeal against an order passed by the proper officer in accordance with Circular No. 182/14/2022-GST, dated 10th of November, 2022 pursuant to the directions issued by the Hon'ble Supreme Court in the Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018, as recommended by the Law Committee is enclosed with this agenda note as **Annexure-A**.

4. Accordingly, the recommendations of the Law Committee as detailed in para 3 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. /2023 – CENTRALTAX

New Delhi, the ---- June, 2023

S.O.(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act,2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure to be followed by a registered person (hereinafter referred to as "the said person") desirous of filing an appeal against an order (hereinafter referred to as "the said order") passed by the proper officer in accordance with Circular No. 182/14/2022-GST, dated 10th of November, 2022 pursuant to the directions issued by the Hon'ble Supreme Court in the Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018.

Explanation. - For the purposes of this notification, the expression "said person" shall include the officer referred to in sub-section (2) of Section 107.

2. The appeal against the said order shall be made in duplicate in the Form appended to this notification at **ANNEXURE-1** and shall be presented manually before the Appellate Authority within the time specified in sub-section (1) of Section 107 or sub-section (2) of Section 107, as the case may be, and such time shall be computed from the date of issuance of this notification or the date of the said order, whichever is later:

Provided that any appeal against the said order filed in accordance with the provisions of Section 107 with the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification.

3. The said person shall not be required to deposit any amount as referred to in sub-section (6) of Section 107 as a pre-condition for filing an appeal against the said order.

4. An appeal filed under this notification shall be accompanied by relevant documents including a self-certified copy of the said order. Further, the appeal and the relevant documents shall be signed by the person specified in sub-rule (2) of rule 26 of CGST Rules.

5. Upon receipt of the appeal referred to in para 4, duly verified in the manner provided above and accompanied by the relevant documents, an acknowledgement, indicating the appeal number, shall be issued manually in FORM GST APL-02 by the Appellate Authority or an officer authorized by him in this behalf and the appeal shall be treated as filed only when the aforesaid acknowledgement is issued.

6. The Appellate Authority shall, along with its order, issue a summary of the order in the Form appended to this notification as **ANNEXURE-2**.

Name

Designation

ANNEXURE-1

Appeal to Appellate Authority

(Filed against an order passed in accordance with Circular No. 182/14/2022-GST, dated 10th of November, 2022 pursuant to the directions issued by the Hon'ble Supreme Court in the Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018)

1. GSTIN–
2. Legal name of the appellant –
3. Trade name, if any –
4. Address –
5. Order No. - Order dated –
6. Designation of the officer passing the order appealed against –
7. Date of communication of the order appealed against –
8. Name of the authorized representative –
9. Details of the case under dispute –

(i) Brief issue of the case under dispute –

(ii) Amount of transitional credit claimed **before** the issuance of circular no. 182/14/2022-GST, dated 10th of November, 2022 (Act-wise)–

(iii) Details of any order u/s 73/74 passed in respect of the claim referred to in sub-item (ii) above:

(a) Order No. - Order dated-
(b) Amount allowed as per said order (Act-wise)- Rs.
(c) Interest and penalty levied as per said order (Act-wise)- Rs.
(d) Whether any appeal preferred against said order- Yes/No
(e) If appeal filed then Appeal No.- Appeal Date-
(f) Status of said Appeal- Disposed/Pending
(g) If appeal disposed off then amount of credit allowed as per said Appeal (Act-wise)- Rs.

(iv) Amount of transitional credit claimed **after** the issuance of circular no. 182/14/2022-GST, dated 10th of November, 2022 (Act-wise)–

(v) Amount of credit allowed in pursuance of claim referred to in sub-item (iii) above (Act-wise)- Rs.

(vi) Amount under dispute (Act-wise)- Rs.

10. Whether the appellant wishes to be heard in person – Yes / No
11. Statement of facts:
12. Grounds of appeal:
13. Prayer:

Verification

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.

Place:
Date:

Signature
Name of the Applicant

Note:

1. If the space provided for answering any item is found to be insufficient, separate sheets may be used.
2. The letters “N.A.” may be recorded against any item that is not required for this Appeal.

ANNEXURE-2

SUMMARY OF TRANSITIONAL CREDIT AVAILABLE AFTER ISSUE OF ORDER BY THE APPELLATE AUTHORITY WITH REFERENCE TO AN ORDER PASSED IN ACCORDANCE WITH CIRCULAR NO. 182/14/2022-GST, DATED 10th of NOVEMBER, 2022

A. GSTIN -

B. Name of the Appellant/ person-

Address of the appellant/person -

C. Order appeal against-Ref. (if any) Dated-

D. Appeal No. Dated-

E. Personal Hearing-

F. Order in Brief-

G. Status of Order- Confirmed/Modified/Rejected

H. Amount of Credit/ Demand after Appeal-

Particulars	Central Tax	State Tax
a) Amount of transitional credit found to be admissible pursuant to order of the Proper Officer		
b) Amount determined by Appellate Authority		

Place:

Date:

Signature:

Name of the Appellate Authority:

Designation:

Jurisdiction:

Agenda Item 3(xix): Issues pertaining to ISD mechanism and taxability of services provided by one distinct person to another distinct person.

A taxpayer with multiple branch offices often procures the input services from a third party at Headquarters or at one office, for and on behalf of the other offices. Such taxpayers can then adopt various mechanisms to transfer the ITC pertaining to such input services to the said offices.

1.Input Service Distributor Mechanism:

1.1 An **Input Service Distributor (ISD)** is a taxpayer that receives invoices for input services used by its one or more branches. It distributes the Input Tax Credit (ITC), to such branches based on a specified mechanism by issuing ISD invoices. The branches can have different GSTINs but must have the same PAN as that of ISD. Section 2(61) of CGST Act, 2017 defines ISD as under:

"2(61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;"

1.2 Further section 20 of CGST Act, 2017 provides for manner of distribution of credit by Input Service Distributor to its branch offices. Section 20 is reproduced below:

"20. Manner of distribution of credit by Input Service Distributor.— *(1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.*

(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

(a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.—For the purposes of this section,—

(a) the "relevant period" shall be—

(i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(b) the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(c) the term ''turnover'', in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92Aof List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule."

2.Mechanism whereby head office raises invoice under section 31 to the branch office without registering as ISD

2.1 Another mechanism that may be followed by a Head Office (HO) of a business entity in cases of input services procured by Head Office (HO) from a third party for or on behalf of one or more branch offices is that the HO can avail ITC on input services procured from a third party for or on behalf of one or more branch offices and then raises an invoice under section 31 of CGST Act to the Branch Office (BO), to which such input services are attributable, and the said BO can then claim ITC in respect of such input services. This mechanism does not require the HO to take registration under the ISD provision of the CGST Act, 2017.

2.2 It is pertinent to note that Explanation to section 16(2)(b) of CGST Act which was brought into effect from 01.02.2019 vide The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) provides that in case of services, the registered person shall be deemed to have received the services where the services are delivered by the supplier to any person on the direction and on account of the said registered person. The said Explanation is reproduced below:

"**16. Eligibility and conditions for taking input tax credit.**—

……..

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

…….

(b) he has received the goods or services or both.

Explanation.— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) **where the services are provided by the supplier to any person on the direction of and on account of such registered person;**"

2.3 As per the Notes on Clauses of the Central Goods and Services Tax (Amendment) Act, 2018, the intention of the said amendment was to provide for input tax credit in cases of "Bill-to-ship-to" model in the case of supply of services. In such cases, two different tax invoices are issued, i.e., by the

seller to a registered person and by the said registered person to the ultimate recipient of service. The bill-to parties of both invoices will receive input tax credits. The overall impact of this transaction is that the ultimate recipient of service will receive the input tax credit for this supply.

2.4 Thus, as per the Explanation to section 16(2)(b) of CGST Act, in cases of input services procured by Head Office (HO) from a third party attributable to a Branch Office (BO), the HO can raise an invoice to BO to which such input services are attributable and the said BO can then claim ITC in respect of such input services.

3. Thus, various practices are being followed by the industry with respect to distribution of input tax credit by HO to branch offices in case of common input services received from third party which are attributable to one or more the BOs. Doubts have been raised by tax authorities as to whether is it mandatory for the HO to follow the Input Service Distributor(ISD) mechanism for distribution of ITC in respect of input services, procured by HO from a third party which are also attributable to one or more BOs or can the HO also follow the mechanism of raising invoice under section 31 to the branch office without registering as ISD and the said BO thereafter claiming ITC in respect of such input services. Some field formations are taking a view that ISD mechanism was mandatory for distribution of input tax credit in respect of input services received by HO attributable to HOs as well as BOs or by one or more BOs and HO was not allowed to pass on input tax credit in respect of third party input services through issuance of tax invoices under section 31 of CGST Act. Some advance rulings authorities have also taken similar view.

4. Taxability and valuation w.r.t. to internally generated activities/services between distinct persons

4.1 The offices or establishments of an organisation, who have obtained registration in one State or in different States, are establishments of distinct persons under sub-section (4) of section 25 of the CGST Act and Explanation 1 of section 8 of the Integrated Goods and Services Tax Act, 2017. GST law envisages these distinct registered persons to be independent entities, though part of one legal entity, and they can be providing services to each other. As per Schedule I to CGST Act, supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business, shall be treated as supply under CGST Act even if made without consideration. Thus, if HO is providing any services to its BOs or one BO is providing any services to other BOs, the same will be deemed as supply of services as per Schedule I of CGST Act, if the said services are provided in the course or furtherance of business, even if no consideration is charged for the said services.

4.2 In case HO is providing certain services, which are internally generated by HO, to BOs, the value of such supply of services made by a registered person to a related or distinct person cannot be determined in terms of provisions of sub-section (1) of section 15 of CGST Act and instead, needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. However, if the open market value is not available, the value of supply of goods or services or both between distinct persons shall be the value of supply of goods or services of like kind and quality as per clause (b) of rule 28. The second proviso to rule 28 of CGST Rules provides that **where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services**. The said rule is reproduced below:

"28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-*The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-*

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services."

5. Disputes are being raised regarding as to whether a particular activity being performed by HO for branch offices or by one BO for another BO can be treated as supply of services. Disputes are also arising regarding the valuation of such internally generated supply of services from one distinct person to another distinct person, including as to which cost component is required to be included while computing taxable value of such internally generated services, both in the cases where full input tax credit is available to the recipient, and also in cases where full input tax credit is not available to the recipient.

6. A draft Circular on the issue was deliberated in the 35th GST Council Meeting held on 21st June 2019 wherein the Council recommended for the Law Committee to re-examine the issue. Accordingly, the Law Committee deliberated on the issue its various meetings and took the following view:

7.1 For common input services procured from third party:

7.1.1 For past periods

7.1.1.1 ISD mechanism is applicable for distribution of input tax credit on input services where the headquarter or one office of a business entity is receiving invoices from the third parties in respect of the services which are attributable to one or more offices of the said entity. As discussed above, many taxpayers may have used methods other than ISD for passing on of input tax credit in respect of such supply of input services received from third parties, which is attributable to one or more of their other offices, i.e. distinct persons, as there was ambiguity and lack of clarity about the whether such distribution of credit is mandatorily required to be done through ISD mechanism or can be done by issuance of tax invoice by headquarters to other branches/ offices/ distinct persons. Rather, the two sectoral FAQs issued – one on IT & ITES and another on banking sector – clarify that ISD mechanism is not mandatory and taxpayer has option to issue invoice for passing on the credit. The relevant question in the **FAQ on IT&ITES** is reproduced below:

*"**Question 26**: Is the requirement of transferring of credit through ISD mechanism mandatory?*
***Answe**r: The ISD provision under the CGST Act, 2017 is not mandatory. It only provides the manner of distribution of ITC wherever the business entity wishes to distribute the ITC as an*

Input Service Distributor."

The relevant question in the **FAQ on banking sector** is as below:

***"17**. Would Input Tax Credit (ITC) be available to a GST registrant though the services procured from third party vendor are also directly used by various 'distinct persons'? In such cases, is distribution of ITC required to be done mandatorily through Input Service Distributor mechanism?*

***Answer**: Yes. Input Tax Credit (ITC) can be availed by a GST registrant in respect of the services procured in a consolidated manner from third party vendor which are directly used in the course or furtherance of business in more than one State, e.g. statutory audit fees, advertisement and marketing expenses, consultancy fees etc. The same needs to be appropriately invoiced or distributed through the ISD mechanism to the "distinct persons" who have actually used such services."*

7.1.1.2 Further, the present formulation of section 20 of CGST Act read with section 24 of CGST Act does not provide any indication that ISD mechanism is mandatory for passing on/ distribution of ITC in respect of input services procured by HO from a third party but attributable to both HO and BO or exclusively to one or more BOs.

7.1.1.3 Law Committee took a view that there is no intent in the present provision of CGST Act to make ISD mechanism mandatory, and accordingly, it may be clarified through a circular that it is not mandatory to follow ISD procedure laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 for distribution of ITC in respect of input services procured by HO from a third party but attributable to both HO and BO or exclusively to one or more BOs and that such credit can also be passed on by HO by issuing tax invoices under section 31 of CGST Act to the concerned BOs. In cases, where HO wants to distribute credit through ISD mechanism, it shall be required to get itself registered mandatorily as per provisions of section 24(viii) of CGST Act. Further, it may also be clarified that HO can distribute the ITC to a BO through ISD mechanism or can issue invoice under section 31 to a BO in respect of an input services received from a third party only if the said services are being supplied to the concerned BO**.**

7.1.2 For prospective periods

7.1.2.1 Law Committee took a view that ISD procedure, as laid down in Section 20 of CGST Act read with rule 39 of the CGST Rules, may be made **mandatory prospectively** for distribution of ITC in respect of input services procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs. Further, ITC on account of input services received from a third party, where such input services are liable to tax on reverse charge basis, should also be required to be distributed through ISD route. This will require amendment in law which the Law Committee may formulate in due course.

7.1.2.2 Further, Law Committee also took a view that the manner of distribution of ISD credit as provided in section 20 does not require amendment at present. However, alternate objective criteria may be explored in future, if deemed appropriate, after consultation with trade.

7.2 For internally generated services:

7.2.1 Business entities also often carry out certain common functions from HO, which may be in nature of supervisory/ stewardship/ managerial oversight/ financial functions, which the business entity deems as the core functions of the HO and not directly attributable to any BO. Accordingly, they may not be considering the said activities as supply of services to BOs and accordingly may not be issuing tax invoices in respect of such activities. Further, in cases where they are issuing invoices in respect of some internally generated services to BOs, they may not bet including the cost component of some elements such as salary of employees involved in providing said activities/functions while raising invoices to BOs. In a large number of cases, the field formations, during audit or investigations, are taking a view that HOs are providing supply of such services to BOs in respect of such functions/ activities and that HO should have raised tax invoices as per section 31 of CGST Act, and/ or should have included the cost of salary paid to such employees of HO in respect of said supply of services.

7.2.2 As per second proviso to rule 28 of CGST Rules, **where the recipient is eligible for full input tax credit**, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, **in case where full input tax credit is available to BOs**, the value declared on the invoice by HO to BO in respect of a supply of services shall be deemed to be the open market value of such services. The intent of the Council for insertion of the said proviso in rule 28 appeared to be to ease the burden of compliance on the business entities on such deemed supplies between various offices of a business entity, having same PAN but which are required to obtain different registrations in different states due to requirement of GST law. Raising any demand on a business entity on the basis that the HO or a BO of the said business entity has not raised a tax invoice in respect of any particular services to other BOs or has not included cost of any component of such services in the invoice, **when the full input tax credit is available to the recipient**, may be against the intention of the GST Council and against the provisions of the second proviso to rule 28 of CGST Rules.

7.2.3 In view of this, LC recommended to clarify through the Circular that **in cases where full input tax credit is available to the recipient**, the value of such supply of services declared in the invoice by HO to BOs may be deemed as open market value, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has not been included in the value of the services in the invoice, or not. It may be further clarified that **in cases where full input tax credit is available to the recipient** if the invoice is not issued with respect to any internally generated services by the HO to the BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.

7.2.4 As regards the cases, **where full input tax credit is not available to the recipient**, Law Committee took a view that the issue of taxability and valuation of such supply of internally generated services may be deliberated further.

8. Accordingly, Law Committee recommended issuance of a circular to clarify the issues as discussed in the above paras. The draft circular as recommended by the Law Committee is placed as **Annexure A** to this agenda note.

9. In-principle approval is also sought from the Council for the proposals mentioned at para 7.1.2 above.

10. Accordingly, the agenda along with draft Circular (**Annexure-A**) is placed before the Council for approval.

Annexure-A

Draft Circular

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

North Block, New Delhi
Dated XX, 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 regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons– reg.

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

2. Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below: -

S. No	Issues	Clarification
1.	Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs	It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of

	or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?	such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act. In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.
2.	In respect of internally generated services, there may be cases where HO is providing certain services to the BOs **for which full input tax credit is available to the**	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of

	concerned BOs, however, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs **when full input tax credit is available to the concerned BOs**.	goods or services or both between distinct persons shall be the open market value of such supply. The **second proviso to rule 28** of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, **if the recipient BO is eligible for full input tax credit**. Accordingly, in cases **where full input tax credit is available to a BO**, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such **cases where full input tax credit is available to the recipient**, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.

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

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

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 11: Addendum to Annexure-A of the Agenda item 11

In the table of Annexure A of Agenda Item 11 (at P-30 of Volume-II), Sl. No. 16 and 17 may be read as follows:

S.No.	State	Act	Ordinance	No. of Benches proposed	Location of Benches proposed
16	**Maharashtra**			7	Mumbai-2, Thane-1, Pune-2, Nagpur-1 and Aurangabad (Chhatrapati Sambhajinagar)-1
17	**Manipur**		under process	Common Bench with Guwahati, Assam	Guwahati

Agenda Item 13: Request for extension of due dates for filing GSTR-7, GSTR-1 & GSTR-3B for the months of April, May and June 2023 and extension of Amnesty Schemes in the State of Manipur

Request has been received from the CCT Manipur vide letter dated 03.07.2023 on the captioned subject. It has been stated that due to volatile law and order situation in the State, mobile data services and internet/ data service are under suspension in the State.

2. It may be noted that in view of the law and order situation in the State of Manipur, the due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for the months of April and May 2023 for the registered persons of State of Manipur were extended earlier as below, as per recommendations of GST Implementation Committee (GIC):

(i) due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for April, 2023 were first extended until 31.05.2023 vide notifications dated 24.05.2023;
(ii) due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for April and May, 2023 were thereafter extended until 30.06.2023 vide notifications dated 19.06.2023

3. It has now been requested by CCT, Manipur to extend the due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for the months of April, May and June, 2023 till 31.07.2023 to provide relief to the registered persons in Manipur.

4. Moreover, the GST Council in its 49th meeting held on 18th February, 2023 had recommended certain amnesty measures which were notified on 31.03.2023 as under:

(i) Amnesty to GSTR-4 non-filers was provided vide Notification No. 02/2023-CT;
(ii) time limit for application for revocation of cancellation of registration was conditionally extended vide Notification No. 03/2023-CT;
(iii) Amnesty scheme for deemed withdrawal of assessment orders issued under Section 62 was provided vide Notification No. 06/2023-CT;
(iv) Amnesty to GSTR-9 non-filers was provided vide Notification No. 07/2023-CT;
(v) Amnesty to GSTR-10 non-filers was provided vide Notification No. 08/2023-CT;

5. It has now been requested by CCT, Manipur to extend the said Amnesty Schemes till 31.07.2023 in the State of Manipur as these amnesty schemes have cometo an end on 30.06.2023.

6. The feasibility and readiness for implementation of these changes on the portal was sought from GSTN. GSTN, vide their mail dated 06.07.2023, has informed the following:

i) The due dates for filing of FORM GSTR-1, FORM GSTR-3B and FORM GSTR-7 for the taxpersons registered in state of Manipur can be configured immediately on approval by the Council.
ii) For implementation of extension of the due dates of Amnesty schemes as mentioned in para 4 above, such extension of due dates of amnesty schemes on All India basis can be easily configurated on the system. However, for extending the due dates of Amnesty schemes only for State of Manipur, code level changes will be required to be done in the individual forms, which will take time to implement and which may not be feasible to be done by 31st July 2023.

7. It is also mentioned that representations have been received from some trade associations from other states also, who have sought for the extension of due dates of these Amnesty schemes beyond 30th June 2023.

8. Therefore, the agenda is placed before the Council for deliberation.

Agenda Item 14: 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 2023-24 vis-à-vis FY 2022-23.

Figure 1: Monthly gross GST collection (in ₹ lakh crore)

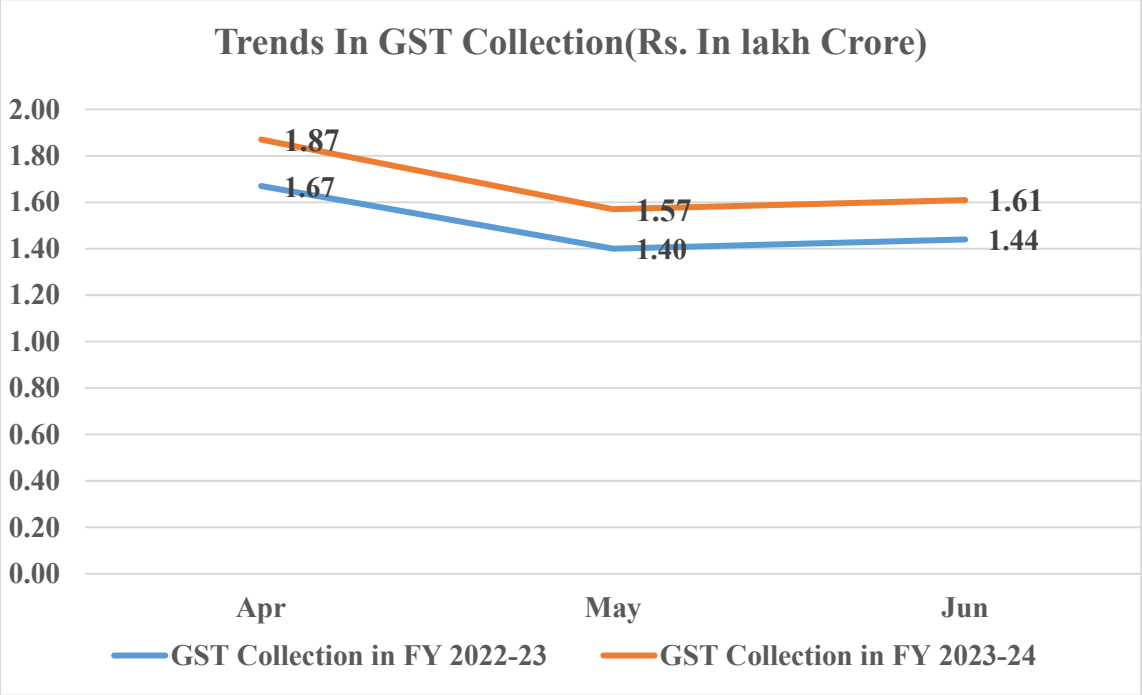


Table 1: Monthly gross GST collection (₹ crore)

GST Collection	Jan'23	Feb'23	Mar'23	Apr'23	May'23	Jun'23
CGST	29,051	27,662	29,546	38,440	28,411	31,013
SGST	36,847	34,915	37,314	47,412	35,828	38,292
IGST	80,995	75,069	82,907	89,158	81,363	80,291
Domestic	42,561	39,380	40,404	54,186	39,591	41,256
Imports	38,434	35,689	42,503	34,972	41,772	39,035
Comp Cess	10,662	11,931	10,355	12,025	11,489	11,900
Domestic	9,863	11,139	9,395	11,124	10,431	10,872
Imports	798	792	960	901	1,057	1,028
Total	**1,57,554**	**1,49,577**	**1,60,122**	**1,87,035**	**1,57,090**	**1,61,497**

Table 2 shows the IGST collected, refunded, and settled/apportioned during FY 2023-24 till June, 2023.

Table 2: IGST Collection/Settlement/Apportionment/Refund in FY23-24

(Figures in Rs. Crore)

1	Collections (+)	2,48,771.74
2	Recovery from IGST Ad-hoc apportionment (+)	0
3	Refunds (-)	41,418.78
4	Settlement (-)	
	i. CGST	1,17,457.14
	ii. SGST	97,997.00
5	Ad-hoc Settlement (-)	0
	i. CGST ad hoc	0
	ii. SGST ad hoc	0
6	**Net (1+2-3-4-5)**	**(-8,101.18)**

Source: PrCCA, CBIC

Compensation Fund

2. 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 June, 2023 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**	**2023-24 (till Jun'23)**
Opening Balance		21,466	47,271	55,736	9,734^	9,344	(27,961.59)
Compensation Cess collected (net)	62,612	95,081	95,551	85,191	1,04,609	1,25,863	34867.30
Compensation released	41,146	69,275	1,20,498	1,36,988	97,500	1,49,168	21975.88
Balance	21,466	47,271	55,736*	3939	16,844$	(13,962)#	(15,070.17)

** 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 on 01.06.2020.*

^ 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.

 # Balance GST compensation cess available is Rs. (-13,961.59) crore. However, taking into account the interest of back to back loan of Rs. 14,000 crore, GST compensation cess carried forward to FY 2023-24 as opening balance is Rs. -27,961.59 crore.

Table 4: Status of AG's certificate received and processed:

	Name of State/UT	2017-18	2018-19	2019-20	2020-21	2021-22
1	Andhra Pradesh					
2	Arunachal Pradesh					
3	Assam					
4	Bihar					
5	Chhattisgarh					
6	Delhi					
7	Goa					
8	Gujarat					
9	Haryana					
10	Himachal Pradesh					
11	J & K					
12	Jharkhand					
13	Karnataka					
14	Kerala					
15	Madhya Pradesh					
16	Maharashtra					
17	Manipur					
18	Meghalaya					
19	Mizoram					
20	Nagaland					
21	Odisha					
22	Puducherry					
23	Punjab					
24	Rajasthan					
25	Sikkim					
26	Tamil Nadu					
27	Telangana					
28	Tripura					
29	Uttar Pradesh					
30	Uttarakhand					
31	West Bengal					
AG's certificate pending						
AG's certificate received						

States Revenue Comparison

3. The State-wise details of comparison of SGST revenue and the post settlement SGST revenue (including ad-hoc settlement) for FY 2023-24 (April-June) as compared to FY 2022-23 (April-June) may be seen in the Table 5.

Table 5: State-wise Revenue Comparison Q1 (FY 2023-24) vs Q1 (FY 2022-23)

		Q1 (2023-24) vs Q1 (2022-23) (Amount Rs. in Crore)					
State Code	State/UT	Pre-settlement (Apr'22-Jun'22)	Post-Settlement (Apr'22-Jun'22)	Pre-settlement (Apr'23-Jun'23)	Post-Settlement (Apr'23-Jun'23)	SGST Growth (%)	SGST Growth Post settlement (%)
1	Jammu and Kashmir	601	1,893	829	2,154	38%	14%
2	Himachal Pradesh	584	1,460	716	1,504	22%	3%
3	Punjab	2,033	4,981	2,225	5,383	9%	8%
4	Chandigarh	149	517	175	568	18%	10%
5	Uttarakhand	1,313	1,998	1,404	2,181	7%	9%
6	Haryana	4,689	7,820	5,110	8,858	9%	13%
7	Delhi	3,594	7,303	4,095	8,151	14%	12%
8	Rajasthan	4,089	8,865	4,522	9,866	11%	11%
9	Uttar Pradesh	7,242	17,636	8,423	19,102	16%	8%
10	Bihar	1,855	6,098	2,073	6,547	12%	7%
11	Sikkim	91	229	166	318	82%	39%
12	Arunachal Pradesh	162	470	229	592	41%	26%
13	Nagaland	60	249	91	285	50%	14%
14	Manipur	82	366	105	322	27%	-12%
15	Mizoram	53	234	93	274	75%	17%
16	Tripura	115	375	148	422	28%	13%
17	Meghalaya	127	387	169	452	33%	17%
18	Assam	1,344	3,166	1,567	3,807	17%	20%
19	West Bengal	5,569	9,668	6,312	10,841	13%	12%
20	Jharkhand	1,960	2,873	2,302	3,180	17%	11%
21	Odisha	4,136	4,947	4,237	5,767	2%	17%
22	Chhattisgarh	2,020	2,804	2,168	3,277	7%	17%
23	Madhya Pradesh	2,745	6,920	3,311	8,088	21%	17%
24	Gujarat	9,966	14,447	10,936	16,727	10%	16%
25&26	Dadra and Nagar Haveli & Daman and Diu	181	288	161	295	-11%	2%
27	Maharashtra	22,590	32,865	26,466	38,188	17%	16%
29	Karnataka	8,768	15,905	10,419	18,882	19%	19%
30	Goa	505	915	598	1,066	18%	17%

31	Lakshadweep	3	8	12	40	368%	400%
32	Kerala	3,087	7,389	3,690	8,073	20%	9%
33	Tamil Nadu	8,843	14,707	10,037	15,835	14%	8%
34	Puducherry	116	306	120	432	3%	41%
35	Andaman and Nicobar Islands	66	136	78	160	19%	17%
36	Telangana	4,149	8,958	4,846	9,935	17%	11%
37	Andhra Pradesh	3,232	6,600	3,584	7,556	11%	14%
38	Ladakh	36	98	54	124	49%	26%
97	Other Territory	41	116	62	276	52%	138%
	Grand Total	**106,200**	**193,998***	**121,532**	**219,529**	**14%**	**13%**

***Includes adhoc IGST settlement of Rs. 13,500 crore released to States in June'2022**

Trends in Return filing

5. The table 6 shows the trend in return filing in FORM GSTR-3B and GSTR-1 till due date for return period Jan'23 to May'23. Tables 7 and 8 show the State wise filing for **these months.**

Table 6: Return filing (GSTR-3B/GSTR-1) till due date

Return Period	GSTR-3B (%)	GSTR-1(%)
Jan'23	61%	61%
Feb'23	81%	63%
Mar'23	76%	58%
Apr'23	81%	60%
May'23	81%	60%

Figure 3: GSTR-3B/GSTR-1 Filing till due date

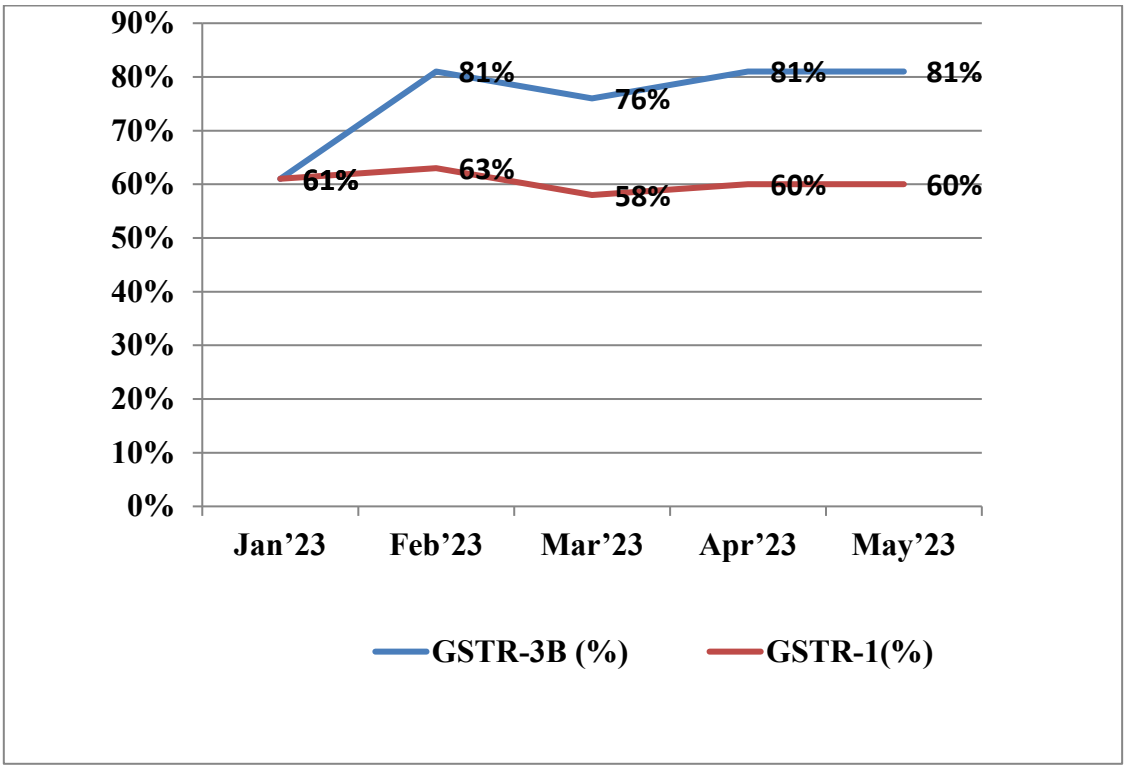


Table 7: State-wise Return filing (GSTR-3B) till due date (Jan'23-May'23)

	State/UT	Jan-23	Feb-23	Mar-23	Apr-23	May-23
01	Jammu and Kashmir	45%	81%	73%	79%	80%
02	Himachal Pradesh	62%	83%	79%	82%	82%
03	Punjab	75%	82%	79%	85%	84%
04	Chandigarh	78%	85%	81%	86%	86%
05	Uttarakhand	56%	78%	74%	79%	78%
06	Haryana	73%	82%	79%	83%	82%
07	Delhi	71%	82%	80%	82%	81%
08	Rajasthan	70%	82%	77%	83%	82%
09	Uttar Pradesh	53%	82%	76%	82%	82%
10	Bihar	33%	77%	71%	75%	76%
11	Sikkim	37%	76%	71%	76%	75%

12	Arunachal Pradesh	27%	70%	58%	64%	64%
13	Nagaland	33%	73%	66%	71%	72%
14	Manipur	26%	65%	53%	28%	38%
15	Mizoram	22%	74%	73%	75%	76%
16	Tripura	49%	82%	72%	81%	81%
17	Meghalaya	30%	74%	72%	73%	77%
18	Assam	41%	73%	63%	71%	73%
19	West Bengal	57%	83%	79%	83%	83%
20	Jharkhand	51%	81%	75%	80%	80%
21	Odisha	44%	77%	72%	76%	74%
22	Chhattisgarh	54%	72%	63%	72%	73%
23	Madhya Pradesh	58%	79%	70%	78%	78%
24	Gujarat	85%	89%	84%	88%	88%
25	Dadra and Nagar Haveli & Dama	78%	81%	76%	82%	81%
27	Maharashtra	69%	80%	74%	79%	79%
29	Karnataka	61%	82%	75%	79%	80%
30	Goa	54%	76%	69%	74%	75%
31	Lakshadweep	60%	71%	69%	69%	71%
32	Kerala	63%	80%	71%	78%	79%
33	Tamil Nadu	63%	84%	78%	83%	84%
34	Puducherry	57%	79%	75%	79%	79%
35	Andaman and Nicobar Islands	49%	69%	61%	66%	66%
36	Telangana	49%	77%	70%	76%	77%
37	Andhra Pradesh	58%	80%	72%	78%	79%
38	Ladakh	40%	76%	73%	72%	71%
97	Other Territory	75%	78%	81%	77%	75%
Total		**61%**	**81%**	**76%**	**81%**	**81%**

Table 8: State-wise Return filing (GSTR-1) till due date (Jan'23-May'23)

	State/UT	Jan-23	Feb-23	Mar-23	Apr-23	May-23
01	Jammu and Kashmir	45%	45%	37%	41%	40%
02	Himachal Pradesh	62%	63%	51%	61%	59%
03	Punjab	75%	80%	72%	78%	77%
04	Chandigarh	78%	81%	75%	80%	78%
05	Uttarakhand	56%	58%	50%	57%	55%
06	Haryana	73%	75%	70%	74%	72%
07	Delhi	71%	75%	74%	74%	72%
08	Rajasthan	70%	71%	63%	70%	69%
09	Uttar Pradesh	53%	52%	48%	50%	51%
10	Bihar	33%	32%	29%	31%	31%
11	Sikkim	37%	43%	36%	40%	39%
12	Arunachal Pradesh	27%	32%	25%	23%	27%
13	Nagaland	33%	35%	31%	33%	31%
14	Manipur	26%	25%	25%	13%	17%
15	Mizoram	22%	24%	22%	25%	24%
16	Tripura	49%	49%	42%	46%	46%
17	Meghalaya	30%	35%	28%	32%	32%
18	Assam	41%	42%	35%	39%	38%
19	West Bengal	57%	58%	53%	56%	56%
20	Jharkhand	51%	49%	46%	48%	47%
21	Odisha	44%	45%	39%	42%	42%
22	Chhattisgarh	54%	53%	44%	52%	52%
23	Madhya Pradesh	58%	57%	45%	54%	53%
24	Gujarat	85%	86%	81%	84%	84%
25	Dadra and Nagar Haveli & Dama	78%	80%	78%	80%	79%

27	Maharashtra	69%	72%	66%	69%	68%
29	Karnataka	61%	63%	57%	57%	58%
30	Goa	54%	62%	57%	59%	59%
31	Lakshadweep	60%	58%	50%	51%	45%
32	Kerala	63%	65%	58%	62%	61%
33	Tamil Nadu	63%	64%	59%	61%	60%
34	Puducherry	57%	57%	53%	54%	52%
35	Andaman and Nicobar Island	49%	47%	40%	46%	43%
36	Telangana	49%	53%	49%	50%	49%
37	Andhra Pradesh	58%	58%	51%	53%	52%
38	Ladakh	40%	42%	36%	33%	37%
97	Other Territory	75%	77%	79%	74%	78%
Total		**61%**	**63%**	**58%**	**60%**	**60%**

Recommendations of Fitment Committee on positive list of services to be specified in Sr. No. 3/3A of Notification No. 12/2017-CT(R)) dated 28.06.2017

The entries at Sr. No. 3 and 3A of exemption Notification No. 12/2017-CT(R) dated 28.06.2017 exempt supply of pure services and composite supplies (goods component 25% or less) supplied to Central Government, State Government or Local Authority, by way of any activity in relation to Municipal or Panchayat functions under Article 243G or 243W of the Constitution

2. 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. Prior to 1.1.2022, the exemption entries covered services supplied to Governmental authority and Governmental entities also.

4. There was a similar exemption in Service Tax initially. However, in view of disputes of interpretation and misuse , the exemption was restricted to supply of services by way of five specific activities, namely , *water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation.*

5. In view of the concern that the exemption is being interpreted too widely , a proposal to specify a positive list of services under the said entries was placed before the 45th GST Council meeting. The Council was of the view that while the approach to specify a positive list of exempt services was agreeable, 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. Comments were received from West Bengal, Bihar and Tamil Nadu. 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 the 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. The list contained the following 6 services :

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.

7. With this positive List approach, it was also felt that the authorities constituted 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. Accordingly , the exemption may also be extended to specified services supplied to Public Authorities which 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.

8. The recommendation of the Fitment Committee was discussed in the 47th GST Council meeting held on 28th -29th June, 2022. Since, some of the states expressed their concerns that the positive list of services should be more broad based, the Council directed that the proposal to specify a positive list of services under Sr. No. 3 & 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 may be reconsidered by the Fitment Committee taking into account the inputs from all the States which had voiced their concerns in the said council meeting.

9. Accordingly, the States of Telangana, Andhra Pradesh and Delhi were invited to the Fitment Committee meeting held on 12.09.2022 to give their views on the said issue. At the said meeting, Telangana requested to include Public Distribution System, Animal Husbandry etc. under the proposed positive list. Andhra Pradesh suggested expanding the proposed definition of Public Authority so as to cover manpower supply services hired by the state through a state corporation under exemption.

10. The views given by the states in writing were as under:

Telangana :

The following services may be added to the list of services to be specified in entry 3/3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017:

• Public Distribution and the related activities including Custom Milling and transportation services

Process of public distribution system involves large scale procurement of Custom Milling Services and renting of vehicles transportation services, without which the final goal of distribution cannot be met.

• Minor Irrigation

Telangana has taken up the programme of restoring the minor irrigation sources under the title "Mission Kakatiya". The services procured under this programme areprimarily in the nature of pure services or services where goods component is less than 25%.

• Social forestry and Farm forestry

For achieving the objective of increasing tree cover in the State to 33% of the total geographical area of the State through the "Haritha haram".

• Roads and bridges

To improve the connectivity, earth work (laying of mud roads) is taken up on a continuous basis in many villages. These services are generally procured from the Local people and the involvement of the goods component in these services is quite low.

Delhi

The exemption on services mentioned in Article 243 G & 243 W of Constitution of India should be continued.

11. In view of the above suggestions received from states, the Fitment Committee went through the list of activities specified in the 11th and 12th Schedule to the Constitution and recommended that the following services may be added to the positive list of services (placed before the 47th GST Council) under Sr. No. 3/3A of Notification No. 12/2017-CTR

- Education, including primary and secondary schools
- Technical training and vocational education
- Adult and non-formal education
- Libraries
- Social Forestry and Farm Forestry
- Fire Services

11.1 On the suggestion to include 'society' also in the definition of Public Authority, consensus was that the phrase 'any other body' used in the definition of Public Authority proposed in the 47th GST Council Meeting would include societies, companies, corporations etc. also.

11.2 As regards, the suggestion of Telangana to include Minor Irrigation & Roads and Bridges. GST on specified works contract services (WCS) supplied to Central Government, State Government and Local Authorities has recently been revised from 12% to 18% with effect from 18.07.2022 and on WCS predominantly involving earthwork from 5% to 12%. Services procured for minor irrigation and for construction/laying down of roads & bridges would predominantly be WCS which the GST Council has recommended to be taxed at 18%/12%.

11.3 Exempting custom milling will block the input tax credit (ITC) of the milling units on capital goods, raw materials (such as packing material, vitamins and other fortification additives etc.) and input services. GST payable on customs milling will in any case flow back to the Government as revenue.

12 Accordingly, after reconsidering the issue , the Fitment Committee recommended that (a) the following expanded list of 12 services may be specified in SI. No. 3 and 3A of Notification No. 12/2017-CTR as under:

"3. 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. Education, including primary and secondary schools;
6. Technical training and vocational education;
7. Adult and non-formal education;
8. Libraries;
9. Social Forestry and Farm Forestry;
10. Fire Services;
11. Renting of motor vehicles for carrying out functions listed at Sr. No. 1 to 10 above;
12. Supply of manpower services for carrying out functions listed at Sr. No 1 to 10 above."

(b)Public authority may be defined as under:

"Public Authority means an authority or a board or any other body established and controlled by the ***Central or State Government*** *to carry out the functions listed in SI. No. 1 to 10 of the entry."*

(c) As a consequential change to the proposed modification in entry 3 and 3A of the said Notification, an explanation may be inserted in the modified entry along the lines of the Circular No.177/09/2022-TRU dated 03rd August 2022 as under:

"Explanation: The exemption under this entry applies only to pure services and composite supplies procured by Central Government, State Government, Union Territories, local authorities or a public authority for performing functions listed in the 11th and 12th Schedule of the Constitution. Services procured by any Central/State Government Ministry/Department /Union Territory or Public Authority which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, are not eligible for exemption under this entry."

13. The above recommendation of the Fitment Committee was discussed in the 48th GST Council meeting held via video conference . Some of the states including Tamil Nadur, Delhi, Kerala, Andhra Pradesh and west Bengal did not agree with the recommendation of the Fitment Committee. The Council decided to postpone discussion on the positive list of services in a physical meeting of the GST Council.

14. The recommendations of the Fitment Committee is placed before the GST Council for consideration.

Annexure-B to Agenda Item 7 on Scheme of Budgetary Support under GST regime

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7405 OF 2022
[Arising out of SLP (Civil) No. 12397 of 2020]

M/S HERO MOTOCORP LTD. ...APPELLANT (S)

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT(S)

WITH
CIVIL APPEAL NO. 7406 OF 2022
[Arising out of SLP (Civil) No. 11978 of 2021]

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. These appeals raise an important question of law as to whether the Union of India can be directed to adhere to the representation as made by it in the Office Memorandum dated 7th January 2003 (hereinafter referred to as "the said O.M. of 2003") even after the enactment of the Central

Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act").

3. Civil Appeal arising out of Special Leave Petition (Civil) No. 12397 of 2020 arises out of judgment and order dated 2nd March, 2020, passed by the High Court of Delhi, dismissing the Writ Petition (Civil) No. 505 of 2022 filed by the appellant – Hero Motocorp Ltd., thereby rejecting the appellants claim of 100% budgetary support in lieu of the pre-existing 100% outright excise duty exemption for ten years from the date of the commencement of commercial production, as provided for by the said O.M. of 2003 issued by the Government of India.

4. Civil Appeal arising out of Special Leave Petition (Civil) No. 11978 of 2021, arises out of judgment and order dated 5th February, 2021 passed by the High Court of Sikkim, dismissing the Writ Petition (C) No. 47 of 2018, filed by the appellant – Sun Pharma Laboratories Ltd. assailing the reduction of the benefit of 100% exemption from excise duty granted to it vide office memorandum dated 17th February,

2003, which were to be made available for a period of ten years from the date of commencement of commercial production.

5. Both the appellants herein approached the respective High Courts claiming therein that in view of the said O.M. of 2003 and Notification No.50/2003-C.E. dated 10th June 2003 (hereinafter referred to as "2003 Notification"), the Union was bound to give 100% tax exemption till completion of 10 years' period from the date of commencement of their commercial production.

FACTUAL BACKGROUND

6. The factual scenario leading to the filing of the present appeals lies in a narrow compass, which is as under:

6.1 The Government of India had issued the said O.M. of 2003 based on the statement made by the Hon'ble Prime Minister, during his visit to Uttranchal (now Uttarakhand) in March 2002. The said O.M. of 2003 provided that, for the States of Uttaranchal and Himachal Pradesh, new industrial units and existing industrial units on their

substantial expansion would be entitled to exemption of 100% outright excise duty for 10 years from the date of commencement of commercial production. The said O.M. of 2003 also provided that there shall be 100% income tax exemption for such units initially for five years and thereafter 30% for companies and 25% for other companies for a further period of five years, from the date of commencement of commercial production. Various other incentives were also provided vide the said O.M. of 2003.

6.2 In pursuance to the said O.M. of 2003, a 2003 Notification was notified in exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and sub-section (3) of Section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. The said notification provided for exemption for a period not exceeding ten years from the date of publication of the said notification in the Official Gazette or from the date of

commencement of commercial production, whichever was later.

6.3 The appellant – Hero Motocorp Ltd. had established a new industry unit for manufacture of motorcycles at Haridwar, Uttarakhand, which commenced commercial production from 7th April, 2008. The appellant – Hero Motocorp Ltd. availed the exemption until 1st July, 2017, whereafter the Goods and Service Tax regime came into existence and the benefit being enjoyed by the appellant – Hero Motocorp Ltd. was reduced to 58% through the Budgetary Support Policy.

6.4 The appellant - Sun Pharma Laboratories Ltd. setup its first industrial unit which commenced its commercial production from 20th April, 2009. A second unit was also set up later which commenced commercial production from 14th April, 2014. Before the advent of the new GST regime, both of the appellant's units were enjoying a full refund of the central excise duties paid by them as provided for in the exemption notification dated 25th June, 2003, pursuant to

the Office Memorandum dated 17th February, 2003. After the commencement of the new GST regime, here too, the benefit being enjoyed by the appellant - Sun Pharma Laboratories was reduced to 58% through the implementation of the Budgetary Support Policy.

6.5 Subsequently, by the Constitution (One Hundred and First Amendment) Act, 2016 (hereinafter referred to as "the 101st Amendment Act"), the Constitution of India came to be amended by the Parliament to introduce the goods and services tax system pan India. By the 101st Amendment Act, concurrent taxing power was conferred on the Union as well as the States including the Union Territories. By the 101st Amendment Act, Article 246A was inserted, making a special provision for levy of Goods and Service Tax ("GST" for short), by both the Union as well as the States. Article 269A was inserted to provide for levy and collection of GST in the course of Inter-State trade or commerce ("IGST" for short) by the Government of India. It also provided that such tax shall be apportioned between the Union and the

States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council ("GST Council" for short).

6.6 In pursuance of the said amendments to the Constitution of India, the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") and Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "the IGST Act") were enacted by the Parliament and various States Goods and Service Tax Acts ("SGST" for short) were enacted by the State Legislatures for their respective States for the levy of GST.

6.7 Under clause (c) of sub-section (2) of Section 174 of the CGST Act, a Notification No.21/2017-CE dated 18th July 2017 was issued by the respondent-Union of India by which the exemption notifications through which tax exemptions were granted as an incentive against the investment came to be rescinded on or after the appointed day, i.e. 1st July 2017. As a result, the tax exemption which was granted by

the said O.M. of 2003 ceased to continue with effect from 1st July 2017.

6.8 The GST Council, in its meeting held on 30th September 2016, had resolved that all entities exempted from payment of indirect tax would pay tax in the GST regime. It had also resolved that the decision to continue with any incentive given to specific industries in existing industrial policies of States or through any schemes of the Central Government would be with the concerned State or Central Government. It was further resolved that in the event it was decided by the concerned State or Central Government to continue any existing exemption/incentive, etc., then it would be administered by way of a reimbursement mechanism through the budgetary route. The modalities of the same were to be worked out by the concerned State/Centre.

6.9 In pursuance of the said recommendations of the GST Council, the Central Government notified the Budgetary Support Scheme vide Notification dated 5th October 2017,

thereby providing to refund/reimburse the Central share of CGST and IGST to the affected eligible industrial units for the residual period in the North Eastern and the Himalayan States. The Central share was determined at 58% of CGST and 29% of IGST.

6.10 Being aggrieved by the decision of the Central Government in restricting the refund only to 58% of CGST and 29% of IGST and not providing 100% refund of CGST, the appellant-Hero Motocorp Ltd. approached the Delhi High Court by way of writ petition being Writ Petition (Civil) No. 505 of 2020 and the appellant-Sun Pharma Laboratories Limited approached the Sikkim High Court by way of writ petition being Writ Petition (Civil) No.47 of 2018. The Delhi High Court, vide its judgment and order dated 2nd March 2020, and the Sikkim High Court, vide its judgment and order dated 5th February 2021, have dismissed the said writ petitions.

6.11 Being aggrieved by the dismissal of the writ petitions, the appellants (the original writ petitioners) have approached this Court.

6.12 Hence the present appeals.

SUBMISSIONS

7. We have heard Shri S. Ganesh, learned Senior Counsel appearing on behalf of the appellant-Hero Motocorp Ltd. in Civil Appeal arising out of Special Leave Petition (Civil) No.12397 of 2020, Shri V. Sridharan, learned Senior Counsel appearing on behalf of the appellant-Sun Pharma Laboratories Ltd. in Civil Appeal arising out of Special Leave Petition (Civil) No.11978 of 2021 and Shri N. Venkatraman, learned Additional Solicitor General appearing on behalf of the respondent-Union of India.

8. Shri S. Ganesh, learned Senior Counsel, submits that the perusal of the said O.M. of 2003 would reveal that an unequivocal representation was made by the Central Government to the commercial entities which were desirous of setting up industrial units in the States of Uttarakhand

and Himachal Pradesh, that, in the event a new industry is established or there is a substantial expansion of the existing unit, then such industrial units would be entitled to 100% exemption from payment of excise duty for 10 years. He submits that the Central Government is bound by such representation. It is submitted that the industrial units like that of the appellants, relying on the promise made by the Central Government, have altered their position to their detriment and as such, the Central Government is now estopped from resiling from the representation made by it to the appellants.

9. Shri Ganesh submits that the figure of refund only to the extent of 58% has been achieved in an arbitrary and irrational manner. He submits that the Union has purportedly done so under the umbrella of the report of the Finance Commission. He contends that, even under the earlier regime of excise tax and all other levies collected by the Central Government, the States were entitled to their share therein. It is stated that the share of the Central

Government and the State Government in the said regime has always been there and it is not as if it has come for the first time after the GST regime started. Learned Senior Counsel submits that under the old regime, though the Central Government was sharing with the States a certain percentage of entire taxes collected by it, still, 100% exemption from the payment of duty was being granted to the entities like the appellants herein. It is submitted that there is no reason as to why the same should not have been continued under the new regime.

10. Shri Ganesh further submits that the policy as is reflected in the said O.M. of 2003 would stand on a higher pedestal than the statutory provision or a notification under a statute and the Union would be bound to adhere to the same. He submitted that even in January 2003 when the exemption notifications were issued, the same sharing pattern was in existence between the States and the Central Government.

11. Shri Ganesh further submits that under Section 11 of the CGST Act, the Government has the power to grant exemption from tax and there is no reason as to why the Union Government should not have exercised such a power in the peculiar facts and circumstances of the case.

12. Learned Senior Counsel, therefore, submits that the view taken by the Delhi High Court is not sustainable in law. He submits that the appeals deserve to be allowed and a direction be issued to the Central Government to provide 100% reimbursement of CGST for the remainder of the period.

13. Shri Ganesh relied on the judgments of this Court in the cases of ***State of Bihar and others vs. Suprabhat Steel Ltd. and others***[1], ***State of Jharkhand and others vs. Tata Cummins Ltd. and another***[2], ***Lloyd Electric and Engineering Limited vs. State of Himachal Pradesh and others***[3], ***MRF Ltd., Kottayam vs. Asstt. Commissioner (Assessment) Sales Tax and others***[4], ***The State of***

[1] (1999) 1 SCC 31
[2] (2006) 4 SCC 57
[3] (2016) 1 SCC 560
[4] (2006) 8 SCC 702

Jharkhand and ors. vs. Brahmputra Metallics Ltd. and ors.[5], ***Manuelsons Hotels Private Limited vs. State of Kerala and others***[6] and ***State of Punjab vs. Nestle India Ltd. and another***[7]

14. He also relied on judgments of various High Courts. However, we do not find it necessary to refer to them inasmuch as the law on the issue is very well crystallized in various judgments of this Court.

15. Shri V. Sridharan, learned Senior Counsel, also submitted that the Central Government had come out with a policy of promoting industrial growth and employment in the backward areas. He submits that even after the GST regime, it should have continued the said policy. He submits that, if the Central Government has brought down the benefit from 100% to 58%, then it should extend/increase the period of benefit to ensure that the promise made in 2003 industrial policy is given effect to in reality. He relies on the judgment of this Court in the case of

[5] MANU/SC/0906/2020 [Civil Appeal Nos. 3860-3862 of 2020, decided on 1.12.2020]
[6] (2016) 6 SCC 766
[7] (2004) 6 SCC 465

Video Electronics Pvt. Ltd. and another vs. State of Punjab and another[8] and ***Union of India vs. Paliwal Electricals (P) Ltd. and another***[9].

16. Shri Sridharan further submitted that the Sikkim High Court has only relied on the judgment of this Court in the case of ***Union of India & Anr. vs. V.V.F. Limited & Anr.***[10] He submitted that the issue in the case of ***V.V.F. Limited & Anr. (supra)*** was with regard to the withdrawal of notification since it was found to be misused. He submits that the factual situation in the present case is different and as such, the High Court was in error in dismissing the writ petition.

17. Shri N. Venkatraman, learned Additional Solicitor General ("ASG" for short), on the contrary, submits that promissory estoppel cannot be applied to the representation made by the Union of India, if there is a material change in the circumstances and the larger public interest warrants such a withdrawal. He submits that, in view of the

[8] (1990) 3 SCC 87
[9] (1996) 3 SCC 407
[10] 2020 SCC Online SC 378

constitutional amendment, a new era of GST has emerged. He submits that the new era emphasizes on the principle of *pooled sovereignty* where States and Centre share equal responsibilities. Learned ASG submits that Article 279A of the Constitution provides for the establishment of the GST Council. It is submitted that the GST Council consists of (a) the Union Finance Minister; (b) the Union Minister of State in charge of Revenue or Finance; and (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government. He submits that the GST Council has been empowered to make recommendations to the Union and the States on the taxes, cesses and surcharges levied by the Union, the States and the local bodies which are to be subsumed in the GST. It is submitted that clause (6) of Article 279A of the Constitution of India directs the GST Council to be guided by the need for a harmonized structure of GST and the development of a harmonized national market for goods and services, while discharging its functions. He submits that under clause (1)

of Article 246A of the Constitution, both the Parliament as well as the State Legislatures have been empowered to make laws with respect to GST to be imposed by the Union or by such States, whereas clause (2) of the said Article empowers Parliament to make laws with respect to GST where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

18. Learned ASG would, therefore, submit that a sea change has occurred with the advent of GST from 1st July 2017. The first change, in the submission of the learned ASG, is that the earlier tax regime was origin based, whereas the new tax regime is destination based. Under the old regime, the Centre was collecting 100% excise duty, service tax, central sales tax, etc. and the States were collecting 100% Value Added Tax ("VAT" for short). Under the old tax regime, there was no uniformity with regard to State levies, whereas under the new tax regime, there is uniformity. Under the new regime, both Union and the States come on the same platform under Articles 246A and

279A of the Constitution and become common partners for taxing together. Under the new regime, both States as well as Union charge at the same rate. Learned ASG submits that the only common feature in the old regime as well as in the new regime is that the Centre continues to fund the States.

19. Learned ASG further submitted that pursuant to the enactment of GST, a notification, being Notification No. 21 of 2017, was issued on 18th July 2017, thereby withdrawing the exemptions granted previously under the erstwhile excise regime. He submits that the appellants have not challenged the validity of the said Notification. He further submits that, in view of the proviso to clause (c) of sub-section (2) of Section 174 of the CGST Act, the exemptions stood automatically rescinded. The validity thereof has also not been challenged by the appellants. He, therefore, submits that the writ petitions, without challenging the validity thereof, are not tenable.

20. Learned ASG submits that, though after the enactment of the GST the Central Government was not bound to continue granting any relief, however, as a matter of good gesture and on the recommendations of the GST Council, it has decided to reimburse 58% of CGST paid by such industrial units who were entitled to the benefit of exemption notifications. He submits that the said has been done based on the recommendations of the Finance Commission, which has earmarked the share of the Union at 58% and of the States at 42%.

21. Learned ASG submits that the writ petitions have been erroneously filed seeking a relief against the Union. He submits that if the appellants have any claim, then that would be against the State Governments wherein the industries are situated. It is submitted that, as a matter of fact, the Government of Jammu & Kashmir, vide Notification dated 21st December 2017 has already resolved to reimburse the remaining 42% of the GST to the units located in the State till the period the Union Scheme is

valid. It is submitted that the appellants ought to have sought similar relief against the State Governments. Thus, in his submission, a writ against the Union of India is untenable.

22. Learned ASG further submits that the writ of mandamus could only be issued against a statutory body when it is established that there is a duty cast upon a statutory authority and that the said authority has neglected to perform such duty. It is submitted that the appellants have not been in a position to point out that any such duty is cast upon the Union to reimburse 100% GST and as such, the present appeals would not be tenable.

23. Learned ASG, relying on various judgments of this Court submitted that in view of the overwhelming public interest, the Union cannot be held to comply with the assurance given by it in the said O.M. of 2003.

24. In support of his submissions, learned ASG relies on the judgments of this Court in the cases of ***Union of India and others vs. VKC Footsteps India Private Limited***[11],

[11] (2022) 2 SCC 603

Union of India and another vs. Mohit Minerals Pvt. Ltd. through Director[12], ***Union of India and others vs. Unicorn Industries***[13], ***Augustan Textile Colours Limited (Now Augustan Textile Colours Private Limited) vs. Director of Industries and another***[14], ***Kuldeep Singh vs. Govt. of NCT of Delhi***[15], ***Union of India and another vs. International Trading Co. and another***[16], ***Comptroller and Auditor General of India, Gian Prakash, New Delhi and another vs. K.S. Jagannathan and another***[17] and ***Union of India & others vs. Bharat Forge Ltd. & another***[18].

25. Shri S. Ganesh, learned Senior Counsel, in rejoinder, submits that the submission of the learned ASG that the remedy lies against the States and not against the Centre is devoid of any substance. He submits that the assurance was given by the Central Government and not by the State

---

[12] 2022 SCC OnLine SC 657
[13] (2019) 10 SCC 575
[14] (2022) 6 SCC 626
[15] (2006) 5 SCC 702
[16] (2003) 5 SCC 437
[17] (1986) 2 SCC 679
[18] Civil Appeal No.5294 of 2022 (@ SLP(C) No.4960 of 2021) decided on 16th August, 2022

Governments. He submits that the said O.M. of 2003 has to be understood from a viewpoint of a businessman to whom the commercial representation was made. The words "exemption from direct or indirect tax" is required to be given full meaning. He submits that the proviso to Section 174(2)(c) of the CGST Act would not be applicable in the present case if looked at from the viewpoint of the ordinary businessman.

CONSIDERATION

26. It is not in dispute that the Union of India had framed a policy vide the said O.M. of 2003. It is also not in dispute that, vide the said policy, the Central Government had provided that 100% exemption would be granted to the industrial units from payment of outright excise duty for 10 years from the date on which such industrial units commence their commercial production. The incentives applied to the new industrial units as well as existing industrial units going for substantial expansion. As such, it is clear that, vide the said O.M. of 2003, an unequivocal

promise was given to the entities that, in the event they establish a new industrial unit or go for a substantial expansion of their existing industrial units in the States of Uttarakhand and Himachal Pradesh, they would be entitled to 100% tax exemption.

27. It is to be noted that, subsequently, an important development took place. By the 101st Amendment Act, a sea change in the earlier taxation regime occurred. A uniform tax structure throughout the country has been adopted. The GST Council has been constituted, which is empowered to make recommendations to the Union and the States with regard to GST. The Union and all the States have become common partners in levy of various taxes. To give effect to the 101st Amendment Act, the CGST Act has been enacted.

28. The relevant part of Section 174 of the CGST Act reads thus:

> "**174. Repeal and saving**.—(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to

the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994)(hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or Section 173 shall not—

(*a*) .....

(*b*) .....

(*c*) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or"

29. It could thus be seen that, under clause (1) of Section 174, various enactments, including the Central Excise Act, 1944, are repealed. Clause (c) of sub-section (2) of Section

174, however, provides that the repeal of the said Acts shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts. However, the proviso thereto is clear and specific. It specifically provides that any tax exemption granted as an incentive against investment through a notification shall not continue as a privilege if the said notification is rescinded on or after the appointed day.

30. It can thus be seen that, though the first part of clause (c) of sub-section (2) of Section 174 would protect any right, privilege, obligation, etc. under the amended Act or repealed Acts, the proviso thereto provides that any tax exemption granted as an incentive against investment shall not continue as a privilege if the said notification is rescinded on or after the appointed day. Admittedly, vide Notification No.21/2017 dated 18th July 2017, various earlier area-based exemption notifications have been rescinded. It is thus clear that the benefit which was granted under the

2003 Notification stands rescinded in view of the notification issued under proviso to clause (c) of sub-section (2) of Section 174 of the CGST Act.

31. The question, therefore, that would fall for consideration is, as to whether, despite a subsequent statute specifically providing for rescinding the benefits granted under an earlier statute, the Union Government can be compelled to stand by the representation made by it through the earlier notification. In other words, the question that will have to be considered is whether doctrine of promissory estoppel could operate against a statute.

JUDICIAL PRECEDENTS

32. For considering the rival submissions, it would also be necessary to refer to various earlier authoritative pronouncements of this Court on the issue.

33. Heavy reliance is placed on the judgment of this Court in the case of ***Union of India & Ors. vs. M/s Indo-Afghan Agencies Ltd.***[19], which is one of the earlier judgments of this Court considering the issue of promissory estoppel. In

[19] 1968 2 SCR 366

the said case, the Textile Commissioner published a scheme on 10th October 1962, called the Export Promotion Scheme providing incentives to exporters of woolen goods. The scheme was extended by a Trade Notice dated 1st January 1963, to export of woolen goods to Afghanistan. In pursuance of the said scheme, the exporters were entitled to import raw materials of a total amount equal to 100% of the F.O.B. (freight on board) value of their exports. However, the competent authority issued an Import Entitlement Certificate to Indo-Afghan Agencies Ltd. only in part. The Indo-Afghan Agencies Ltd., therefore, made a representation to the authorities. On failure of the authorities to respond, a petition came to be filed in the High Court of Punjab. The High Court held that the Export Promotion Scheme specifically provided for granting certificates to import materials of the "value equal to 100% of the F.O.B. value of the goods exported". It was, therefore, held by the High Court that the petitioners therein were entitled to obtain import licenses for an amount equal to 100% of the F.O.B.

value. The judgment of the High Court was challenged before this Court. One of the issues before this Court was with regard to the violation of principles of natural justice. This Court also considered the issue of promissory estoppel. This Court held:

> "**15.** In these cases it was clearly ruled that where a person has acted upon representations made in an Export Promotion Scheme that import licences *upto* the value of the goods exported will be issued, and had exported goods, his claim for import licence for the maximum value permissible by the Scheme could not be arbitrarily rejected. Reduction in the amount of import certificate may be justified on the ground of misconduct of the exporter in relation to the goods exported, or on special considerations such as difficult foreign exchange position, or other matters which have a bearing on the general interests of the State. In the present case, the Scheme provides for grant of import entitlement *of the value*, and not *upto the value*, of the goods exported. The Textile Commissioner was, therefore, in the ordinary course required to grant import certificate for the full value of the goods exported: he could only reduce that amount after enquiry contemplated by clause 10 of the Scheme...."

34. It could thus be seen that the issue that fell for consideration in the case of ***M/s Indo-Afghan Agencies Ltd. (supra)*** was with regard to an arbitrary reduction of the claim of the writ petitioner contrary to the Export Promotion Scheme. The issue as to whether the Legislature by a subsequent enactment was entitled to withdraw the benefit granted under the earlier scheme did not fall for consideration in the said case.

35. This Court in the case of ***Century Spinning and Manufacturing Company Ltd. and another vs. The Ulhasnagar Municipal Council and another***[20] considered the issue wherein the Municipality had agreed to exempt the appellant therein from payment of octroi duty for 7 years from the date of levy of octroi. However, thereafter, the Municipality sought to levy octroi duty from the appellant therein. This Court observed thus:

> "**12.** If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from

[20] (1970) 1 SCC 582

liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

36. A Constitution Bench of this Court in the case of ***M. Ramanatha Pillai vs. The State of Kerala and another***[21] considered the question as to whether estoppel could arise against a State in regard to abolition of posts. The Constitution Bench observed thus:

> "**37.** The High Court was correct in holding that no estoppel could arise against the State in regard to abolition of post. The appellant Ramanatha Pillai knew that the post was temporary. In *American Jurisprudence* 2d at p. 783 para 123 it is stated "Generally, a state is not subject to an estoppel to the same extent as in an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. ***Therefore as a general rule the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception however arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice".*** The estoppel alleged by the appellant Ramanatha Pillai was on the ground that

[21] (1973) 2 SCC 650

> he entered into an agreement and thereby changed his position to his detriment. The High Court rightly held that the Courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom the estoppel cannot fairly operate."
>
> [emphasis supplied]

37. It can thus clearly be seen that the Constitution Bench has approved the statement in *American Jurisprudence* that the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception to the application of the said doctrine to the State would, however, arise where it is necessary to prevent fraud or manifest injustice.

38. Another Constitution Bench of this Court in the case of ***State of Kerala and another vs. The Gwalior Rayon Silk Manufacturing (WVG). Co. Ltd. Etc.***[22] was considering an issue as to the application of promissory estoppel when a right to compensation for acquisition of forest land as provided in the earlier statute was taken away

[22] (1973) 2 SCC 713

by a subsequent statute. The Constitution Bench held thus:

> "**38.** In an attempt to show that the impugned Act was a piece of colourable legislation, reference was made to the Karala Private Forests Acquisition Bill, 1968 LA Bill No. 33 of 1968 which provided for the acquisition of private forests on payment of compensation for the acquisition. ***That Bill, it is contended, was allowed to lapse and the present Act was enacted with the obvious intention of expropriating vast forest lands without paying compensation.*** We can hardly countenance such an argument. The question really is, in the first place, of the competence of the legislature to pass the impugned Act and, in the second, whether the Act is constitutional in the sense that it is protected by Section 31-A(1). So far as the competence of the legislature is concerned, no objection is made before us. As to its constitutionality we have shown that the Act purports to vast the janman rights to the forests in the Government as a step in the implementation of agrarian reform. ***If this could be constitutionally done by the legislature, the fact that at an earlier stage the Government was toying with the idea of paying compensation to owners of private forests is of little consequence.*** The dominant purpose of the impugned Act,

as already pointed out, is to distribute forest lands for agricultural purposes after making reservations of portions of the forests for the benefit of the agricultural community. The fear is expressed that such a course if, genuinely implemented, may lead to deforestation on a large scale leading to soil erosion and silting of rivers and streams and will actually turn out to be detrimental to the interests of the agricultural community in the long run. It is undoubtedly true that rackless deforestation might lead to very unhappy results. But we have no material before us for expressing opinion on such a matter. It is for the legislature to balance the comparative advantages of a scheme like the one envisaged in the Act against the possible disadvantages of resulting deforestation. There are many imponderables to which we have no safe guides. ***It is presumed that the legislature knows the needs of its people and will balance the present advantages against possible future disadvantages.*** If there is pressure on land and the legislature feels that forest lands in some areas can be conveniently and, without much damage to the community as a whole, utilized for settling a large proportion of the agricultural population, it is perfectly open, under the constitutional powers vested in the legislature, to make a suitable law, and if the law is constitutionally valid this Court can hardly strike it down on the ground that

in the long run the legislation instead of turning out to be a boon will turn out to be a curse.

39. Mr Menon who appeared for the respondent in Civil Appeal No. 1398 of 1972 put forward a plea of equitable estoppel peculiar to his client company. It appears that the Company established itself in Kerala for the production of rayon cloth pulp on an understanding that the Government would bind itself to supply the raw-material. Later Government was unable to supply the material and by an agreement undertook not to legislate for the acquisition of private forests for a period of 60 years if the Company purchased forest lands for the purpose of its supply of raw-materials. Accordingly, the Company purchased 30,000 acres of private forests from the Nilambhuri Kovila Kannan estate for Rs 75 lakhs and, therefore, ***it was argued that, so far as the Company is concerned, the agreement not to legislate should operate as equitable estoppel against the State. We do not see how an agreement of the Government can preclude legislation on the subject. The High Court has rightly pointed out that the surrender by the Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel.***"

[emphasis supplied]

39. It could thus be seen that this Court held that it is presumed that the legislature knows the needs of its people and will balance the present advantages against possible future disadvantages. It has been held that if a new enactment is constitutionally enacted by the legislature, then the fact that, at an earlier stage, the Government was toying with the idea of paying compensation to owners of private forests would be of no consequence. Undisputedly, the GST enactment is an enactment validly enacted by the Parliament. It was also sought to be urged that the petitioner Company, on the basis of the agreement by the State Government that it would not legislate to acquire the forest land for 60 years, had purchased 30,000 acres of private land. It was submitted therein that, applying the doctrine of equitable estoppel, the Government was estopped from enacting a legislation contrary to the agreement. Negating the said contention, it was held that when the legislature exercises its powers for the public

good, the earlier representation would not operate against the Government as equitable estoppel.

40. A four judge Bench of this Court in the case of ***Excise Commissioner, U.P. Allahabad and others vs. Ram Kumar and others***[23] had considered the issue wherein, at the time of the auction, licenses sold by the Government to vend country liquor exempted the levy of sales tax. However, by a subsequent notification, the sale of country liquor was subjected to the levy of sales tax. This Court specifically rejected the contention that the State was estopped from doing so. This Court relied on the earlier Constitution Bench judgment in the cases of ***M. Ramanatha Pillai (supra)*** and ***The Gwalior Rayon Silk Manufacturing (WVG). Co. Ltd. Etc. (supra)***. It held that an assurance given by or on behalf of the Crown by an officer of a government, however high or low in the hierarchy, could not bar the Crown from enforcing a statutory prohibition. It reiterated the legal position that

[23] (1976) 3 SCC 540

estoppel does not operate against the Government or its assignee.

41. In the case of ***The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. vs. Sipahi Singh and others***[24], the State Government had directed that the settlement of the Jalkar would continue with Sipahi Singh for the years 1976-77 and 1977-78. However, on the representation made by the Bihar Eastern Gangetic Fishermen Co-operative Society Ltd., the State Government directed that the settlement of the Jalkar would be with the said Society for the relevant years on certain conditions. Sipahi Singh filed a writ petition which was allowed by the High Court relying on the doctrine of promissory estoppel. A three-judge Bench of this Court, while reversing the judgment of the High Court, observed thus:

> "**13.** The doctrine of promissory estoppel could also not be pressed into service in the present case, as ***it is well settled that there cannot be any estoppel against the Government in exercise of its sovereign legislative and executive***

[24] (1977) 4 SCC 145

> ***functions.*** (See *Excise Commissioner, U.P. Allahabad* v. *Ram Kumar* [(1976) 3 SCC 540 : 1976 SCC (Tax) 360 : AIR 1976 SC 2237])."
>
> [emphasis supplied]

42. It is thus clear that ***The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. (supra)*** is also an authority to hold that there cannot be any estoppel against the Government in the exercise of its sovereign, legislative and executive functions. In the said case, the judgment of this Court in the case of ***M/s Indo-Afghan Agencies Ltd. (supra)*** was pressed into service. Distinguishing the same, this Court observed thus:

> "**14.** The decision of this Court in *Union of India* v. *Indo-Afghan Agencies Ltd.* [AIR 1968 SC 718 : (1968) 2 SCR 366 : (1968) 2 SCJ 889] on which strong reliance is placed by Counsel for Respondent 1 is clearly distinguishable. In that case, unlike the present one, the respondents were not seeking to enforce any contractual right. They were merely seeking to enforce compliance with the obligation which was laid upon the Textile Commissioner by the terms of the Export Promotion Scheme providing for grant (by way of incentives to exporters of woollen textiles and goods) of Entitlement Certificate to import raw materials of a

> total amount equal to 100% of the f.o.b. value of their exports. ***Their claim was founded upon the equity which arose in their favour as a result of the representation made on behalf of the Government in the aforesaid Scheme, the exports of woollen goods made by them to Afghanistan acting upon the representation and curtailment of the import entitlement by the Textile Commissioner without notice to them.***"
>
> [emphasis supplied]

43. Subsequently, a two Judge Bench of this Court in the case of ***Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh and others***[25] again considered the issue of estoppel. In the said case, the State Government had represented that an exemption from sales tax would be granted to new industrial units. Based on the assurance of the State Government, the appellant before this Court in the said case had established its industrial unit. However, subsequently, the Government decided to rescind the said concession. Though this Court, in the facts of the said case, held that the appellant therein, based on the promise made by the respondent therein, had altered its position to its

[25] (1979) 2 SCC 409

detriment and as such, the State could not resile from the said promise, allowing the appeal observed thus:

> "**28.** ..... ***There can also be no promissory estoppel against the exercise of legislative power. The Legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel.*** Vide *State of Kerala* v. *Gwalior Rayon Silk Manufacturing Co. Ltd.* [(1973) 2 SCC 713, 730 (para 39) : (1974) 1 SCR 671, 688]"
>
> [emphasis supplied]

44. Thereafter comes the judgment of this Court in the case of ***M/s Jit Ram Shiv Kumar and others vs. State of Haryana and others***[26]. In the said case, the municipal committee established a small mandi and decided that the purchasers of the plots for sale in the mandi would not be required to pay octroi duty on goods imported within the said mandi. Subsequently, the municipal committee started imposing octroi duty. Challenging the said act of the municipal committee, a writ petition was filed before the High Court. The High Court dismissed the said writ

[26] (1981) 1 SCC 11

petition. The two-Judge Bench of this Court in the said case, referring to judgments of courts of various other jurisdictions as well as the judgments of this Court at an earlier point of time, observed thus:

> "**40.** The scope of the plea of doctrine of promissory estoppel against the Government may be summed up as follows:
>
> (*1*) ***The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.***
>
> (*2*) The doctrine cannot be invoked for preventing the Government from discharging its functions under the law.
>
> (*3*) When the officer of the Government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of ultra vires will come into operation and the Government cannot be held bound by the unauthorised acts of its officers.
>
> (*4*) When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the Court is entitled to require the officer to act according to the scheme and the agreement or representation. The officer

> cannot arbitrarily act on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.
>
> (5) The officer would be justified in changing the terms of the agreement to the prejudice of the other party on special considerations such as difficult foreign exchange position or other matters which have a bearing on general interest of the State."
>
> [emphasis supplied]

45. It can thus clearly be seen that this Court held that the plea of promissory estoppel would not be available against the exercise of the legislative functions of the State. Equally, it cannot be invoked for preventing the government from discharging its functions under the law. The learned judges of this Court in the case of ***M/s Jit Ram Shiv Kumar and others (supra),*** holding that some of the observations of this Court in the case of ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** were not in tune with the earlier judgments of larger Benches of this Court, observed thus:

"**45.** We find ourselves unable to ignore the three decisions of this Court, two by Constitution Benches in *M. Ramanatha Pillai* v. *State of Kerala* [(1973) 2 SCC 650 : 1973 SCC (L&S) 560 : AIR 1973 SC 2641 : (1974) 1 SCR 515] and *State of Kerala* v. *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.* [(1973) 2 SCC 713 : AIR 1973 SC 2734 : (1974) 1 SCR 671] and the third by a Bench of four Judges of this Court in *Excise Commr., U.P., Allahabad* v. *Ram Kumar* [(1976) 3 SCC 540 : 1976 SCC (Tax) 360 : 1976 Supp SCR 532] on the ground that the observations are in the nature of obiter dicta and that it cannot be insisted as intending to have laid down any proposition of law different from that enunciated in the *Indo-Afghan Agencies case* [AIR 1968 SC 718 : (1968) 2 SCR 366 : (1968) 2 SCJ 889] . It was not necessary for this Court in the cases referred to above to refer to *Union of India* v. *Indo-Afghan Agencies Ltd.* [AIR 1968 SC 718 : (1968) 2 SCR 366 : (1968) 2 SCJ 889] for, if properly understood, it only held that the authority cannot go back on the agreement arbitrarily or on its mere whim. We feel we are bound to follow the decisions of the three Benches of this Court which in our respectful opinion have correctly stated the law. We are also unable to read the case of the House of Lords in *Howell* v. *Falmouth Boat Construction Co. Ltd.* [1951 AC 837 : (1951) 2 All ER 278 : (1951) 2 TLR 151] as not having overruled the view of Denning, J., and as not having expressed its disapproval of the doctrine

of promissory estoppel against the Crown nor overruled the view taken by Denning, J. in *Robertson* v. *Minister of Pensions* [(1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323] that "the Crown cannot escape the obligation under the doctrine of promissory estoppel".

46. We find ourselves unable to share the view of the learned Judge that the Constitution Bench of this Court in *Ramanatha Pillai case* [(1973) 2 SCC 650 : 1973 SCC (L&S) 560 : AIR 1973 SC 2641 : (1974) 1 SCR 515] heavily relied upon the quotation from the *American jurisprudence*, para 123, p. 873 of Vol. 28. Again we feel to remark that "unfortunately this quotation was incomplete and had overlooked *perhaps inadvertently*" is unjustified.

(emphasis supplied)"

46. This Court in the said case reiterated the legal position thus:

"**51.** ***On a consideration of the decisions of this Court it is clear that there can be no promissory estoppel against the exercise of legislative power of the State.*** So also the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government

must be held to have notice of the limitations of his authority. the Court can enforce compliance by a public authority of the obligation laid on him if he arbitrarily or on his mere whim ignores the promises made by him on behalf of the Government. It would be open to the authority to plead and prove that there were special considerations which necessitated his not being able to comply with his obligations in public interest."

[emphasis supplied]

47. A three Judge Bench of this Court in the case of ***Union of India and others vs. Godfrey Philips India Ltd.***[27] commented on the correctness of the decision in the case of ***M/s Jit Ram Shiv Kumar and others (supra)*** and observed thus:

"**13.** Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills case* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] ***that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition.*** It is equally true that promissory estoppel cannot be used to compel the Government or a public

[27] (1985) 4 SCC 369

> authority to carry out a representation or promise which is contrary to law or which was outside the authority or, power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in *Motilal Sugar Mills case* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] and we find ourselves wholly in agreement with what has been said in that decision on this point."
>
> [emphasis supplied]

48. Within a short period, another three-judge Bench of this Court in the case of ***Express Newspapers Pvt. Ltd.***

and others vs. Union of India and others[28] referring to the conflict between the case of ***Motilal Padampat Sugar Mills Co. Ltd.*** and the case of ***M/s Jit Ram Shiv Kumar and others (supra)***, observed thus:

> "**182.** I am not oblivious that there was a discordant note struck by Kailasam, J. speaking for himself and Fazal Ali, J. in *Jit Ram Shiv Kumar* v. *State of Haryana* [(1981) 1 SCC 11 : AIR 1980 SC 1285 : (1980) 3 SCR 689] holding that the doctrine of promissory estoppel cannot be invoked for preventing the Government from discharging its functions under law. It is also not applicable when the officer and the Government act outside the scope of their authority. The doctrine of ultra vires will in that event come into operation and the Government cannot be held bound by the unauthorised acts of its officers.
>
> **183.** It is not necessary for purposes of this judgment to resolve the apparent conflict between the decision of Bhagwati, J. in *Motilal Padampat Sugar Mills case* [(1979) 2 SCR 641 : (1979) 2 SCC 409 : 1979 SCC (Tax) 144] as to the applicability of the doctrine of estoppel for preventing the Government from discharging its functions under the law. In public law, the most obvious

[28] (1986) 1 SCC 133

limitation and doctrine of estoppel is that it cannot be evoked so as to give an overriding power which it does not in law possess. In other words, no estoppel can legitimate action which is ultra vires. ***Another limitation is that the principle of estoppel does not operate at the level of Government policy.*** Estoppels have however been allowed to operate against public authority in minor matters of formality where no question of ultra vires arises: Wade: *Administrative Law*, fifth edition, pp. 233-34.

184. The principles laid down in *Maritime Elec. Co.* v. *General Dairies Ltd.* [1937 AC 610 (PC)] and by Lord Parker, C.J. in *Southend-on-Sea Corporation* v. *Hodgson* (*Wickford*) *Ltd.* [(1 962) 1 QB 416] relied upon by learned counsel appearing for Respondent 1 the Union of India are clearly not attracted in the facts and circumstances of the present case. In the present case, admittedly, the then Minister for Works & Housing acted within the scope of his authority in granting permission of the lessor i.e. the Union of India, Ministry of Works & Housing to the Express Newspapers Pvt. Ltd. to construct new Express Building with an increased FAR of 360 with a double basement for installation of a printing press for publication of a Hindi newspaper under the Rules of Business framed by the President under Article 77(3). Therefore, the doctrine of ultra vires does not come into operation. In view of this

> Respondent 1 the Union of India is precluded by the doctrine of promissory estoppel from questioning the authority of the Minister in granting such permission. In that view, the successor Government was clearly bound by the decision taken by the Minister particularly when it had been acted upon."
>
> [emphasis supplied]

49. The three-judge Bench of this Court in the case of ***Express Newspapers Pvt. Ltd. and others (supra)*** held that no estoppel can legitimize action which is ultra vires. It was further held that another limitation is that the principle of estoppel does not operate at the level of Government policy. In the facts of the said case, this Court held that the doctrine of ultra vires did not come into operation in the said case. It held that, in view of the permission granted by the then Minister for Works & Housing, the respondent-Union of India was precluded from questioning the validity thereof. The successor Government was bound by the decision taken by the Minister, particularly when it had been acted upon.

50. It could thus be seen that there is some discord in the judgments of this Court in the cases of ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** and ***Godfrey Philips India Ltd. (supra)*** on one hand and in the case of ***M/s Jit Ram Shiv Kumar and others (supra)*** on the other hand.

51. This Court in the case of ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** holds that, if on the basis of a promise made by a government, an entity changes its legal position to its detriment, the State could not be permitted to resile from the said promise. It is to be noted that the said judgment is authored by Bhagwati, J. and the Bench strength is of two learned judges.

52. Within a period of two years, Kailasam, J. in the case of ***M/s Jit Ram Shiv Kumar and others (supra)*** found fault with some of the observations made in the case of ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** and held that the observations made in ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** were not in tune with the judgments of Constitution Benches in the cases ***M. Ramanatha Pillai***

(supra) and ***The Gwalior Rayon Silk Manufacturing (WVG). Co. Ltd. Etc. (supra)***; and the judgment of a four-Judge Bench of this Court in the case of ***Ram Kumar and others (supra).***

53. The judgment of this Court in the case of ***M/s Jit Ram Shiv Kumar and others (supra)*** again fell for consideration before a three-judge Bench of this Court in the case of ***Godfrey Philips India Ltd. (supra),*** which is again authored by Bhagwati, J. In the case of ***Godfrey Philips India Ltd.*** **(supra),** the judgment of the learned three-Judge Bench delivered through Bhagwati, J. holds that what has been held by learned two judges in the case of ***Motilal Padampat Sugar Mills Co. Ltd.*** has been correctly held so and endorses the said judgment. The said judgment also criticizes the view taken in ***M/s Jit Ram Shiv Kumar and others (supra)***. Within a short period, the issue again comes up for consideration before another three-judge Bench in the case of ***Express Newspapers Pvt. Ltd. and others (supra)***. A.P. Sen, J. speaking for the three-judge

Bench notes the conflict between the view taken by Bhagwati, J. in ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** and Kailasam, J in the case of ***M/s Jit Ram Shiv Kumar and others (supra)***. It appears that since the judgment was delivered within a fortnight from the date on which ***Godfrey Philips India Ltd. (supra)*** was decided, this Court in the case of ***Express Newspapers Pvt. Ltd. and others (supra)*** did not notice the judgment in the case of ***Godfrey Philips India Ltd. (supra).*** However, A.P. Sen, J in ***Express Newspapers Pvt. Ltd. and others (supra)*** held that it was not necessary for the purposes of the said judgment to resolve the conflict between the decision of Bhagwati, J. in the case of ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** and Kailasam, J. in the case of ***M/s Jit Ram Shiv Kumar and others (supra)***. It held that one of the limitations on the principle of estoppel is that it does not operate at the level of Government policy.

54. However, a common thread in all these judgments that could be noticed is that all these judgments consistently

hold that there can be no estoppel against the legislature in the exercise of its legislative functions. The Constitution Bench in the case of ***M. Ramanatha Pillai (supra)*** has approved the view in *American Jurisprudence* that the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. It further held that the only exception with regard to applicability of the doctrine of estoppel is where it is necessary to prevent fraud or manifest injustice. The analysis of all the judgments of this Court on the issue would reveal that it is a consistent view of this Court, reiterated again in ***Godfrey Philips India Ltd. (supra)***, that there can be no promissory estoppel against the legislature in the exercise of its legislative functions.

55. Undisputedly, the Notification dated 18th July 2017 withdrawing the exemption notifications was issued in pursuance of the statutory mandate as provided under Section 174(2)(c) of the CGST Act. If the contention as raised by the appellants is to be accepted, it would make the

provisions under the proviso to Section 174(2)(c) of the CGST Act redundant and otiose. The legislature in its wisdom has specifically incorporated the proviso to Section 174(2)(c) providing therein that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded. If the contention is accepted, it will amount to enforcing a representation made in the said O.M. of 2003 and 2003 Notification contrary to the legislative incorporation in the proviso to Section 174(2)(c) of the CGST Act. In other words, it will permit an estoppel to be operated against the legislative functions of the Parliament. We are, therefore, of the considered view that the claim of the appellants on estoppel is without merit and deserves to be rejected.

56. It is further to be noted that this Court has also consistently held that when an exemption granted earlier is withdrawn by a subsequent notification based on a change in policy, even in such cases, the doctrine of promissory

estoppel could not be invoked. It has been consistently held that where the change of policy is in the larger public interest, the State cannot be prevented from withdrawing an incentive which it had granted through an earlier notification. Reliance in this respect could be placed on the judgments of this Court in the cases of ***Kasinka Trading and another vs. Union of India and another***[29]***, Shrijee Sales Corpn. vs. Union of India***[30]***, State of Rajasthan vs. Mahaveer Oil Industries***[31]***, Shree Sidhbali Steels Ltd. vs. State of U.P.***[32]**,** and ***Director General of Foreign Trade vs. Kanak Exports***[33]

57. Recently, this Court, in the case of ***Unicorn Industries (supra),*** after surveying the earlier judgments of this Court on the issue has observed thus:

> "**26.** It could thus be seen that, it is more than well settled that the exemption granted, even when the notification granting exemption prescribes a particular period till which it is available, can be withdrawn by the

[29] (1995) 1 SCC 274
[30] (1997) 3 SCC 398
[31] (1999) 4 SCC 357
[32] (2011) 3 SCC 193
[33] (2016) 2 SCC 226

> State, if it is found that such a withdrawal is in the public interest. In such a case, the larger public interest would outweigh the individual interest, if any. In such a case, even the doctrine of promissory estoppel would not come to the rescue of the persons claiming exemptions and compel the State not to resile from its promise, if the act of the State is found to be in public interest to do so."

58. We are, therefore, of the considered view that even on the ground of change of policy, which is in public interest or in view of the change in the statutory regime itself on account of the GST Act being introduced as in the instant case, it will not be correct to hold the Union bound by the representation made by it, i.e. by the said O.M. of 2003. Further, this would be contrary to the statutory provisions as enacted under Section 174(2)(c) of the CGST Act.

59. There is another reason which, in our view, could disentitle the relief as was claimed by the appellants before the High Courts. The appellants, in effect, are seeking a writ of mandamus against the Union of India to reimburse

100% of CGST for the remainder of the period instead of only 58%.

60. This Court in the case of ***The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. (supra)*** had an occasion to consider when a writ of mandamus could be issued. This Court held that:

> "**15.** .....There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. ***It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.*** (See *Lekhraj Satramdas Lalvani* v. *Deputy Custodian-cum-Managing Officer* [AIR 1966 SC 334 : (1966) 1 SCR 120 : (1966) 1 SCJ 24] , *Rai Shivendra Bahadur Dr* v. *Governing Body of the Nalanda College* [AIR 1962 SC 1210 : 1962 Supp 2 SCR 144 : (1962) 1

> LLJ 247] and *Umakant Saran Dr* v. *State of Bihar* [(1973) 1 SCC 485 : AIR 1973 SC 964]). In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."
>
> [emphasis supplied]

61. It can thus be seen that unless the appellants show any statutory duty cast upon the respondent-Union of India to grant them 100% refund, a writ of mandamus as sought could not be issued. The position is reiterated by this Court in the case of ***K.S. Jagannathan and another (supra)*** as under:

> "**20.** There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has

> wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

62. It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion *malafidely* or on an irrelevant consideration.

63. This position was again reiterated by this Court recently in the case of ***Bharat Forge Ltd. (supra)*** as follows:

> "**18**. Therefore, it is clear that a Writ of Mandamus or a direction, in the nature of a Writ of Mandamus, is not to be withheld, in the exercise of powers of Article 226 on any technicalities. ***This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise form a Statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public 25 duty in a Statute or otherwise, if in substance, it exists.*** Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority. A Writ of Mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which

> would ordinarily include the need for making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court."
>
> [emphasis supplied]

64. Undoubtedly, in the present case, there is no duty cast on the Union to refund 100% of CGST. As such, we find that the relief as sought cannot be granted.

65. That leaves us with the judgments cited by Shri S. Ganesh and Shri V. Sridharan, learned Senior Counsel.

66. Insofar as the judgment of this Court in the case of ***Suprabhat Steel Ltd. (supra)*** is concerned, the question that arose for consideration was whether the Notification issued under Section 7 of the Bihar Finance Act by the State Government to carry out the objectives and the policy decisions taken in the industrial policy could be held to be bad in law if it is in contravention of the industrial policy. In the case of ***Tata Cummins Ltd. (supra)***, the question that fell for consideration was whether a Notification that was issued for implementation of the industrial policy of the State could be construed strictly or liberally. In the case of

Lloyd Electric and Engineering Limited (supra), the question was, as to whether the delay on the part of the Excise and Taxation Department in issuing Notification pursuant to the decision taken by the Council of Ministers could deny the benefit of Notification to the entities which were entitled thereto.

67. Insofar as the judgment of this Court in the case of ***MRF Ltd., Kottayam (supra)*** is concerned, this Court, in the facts of the said case, specifically came to a finding that the decision to deprive MRF of the benefit of exemption for more than 5 years out of a total period of 7 years was highly arbitrary, unjust and unreasonable. In the case of ***Manuelsons Hotels Private Limited (supra)***, perusal of the impugned judgment therein would reveal that the provision on which Manuelsons Hotels Private Limited was claiming benefit under was deleted with effect from the 1st of March 1993. This Court, therefore, made it clear that the benefit would only be available during the period when the said statutory provision existed in the statute book, i.e., from 6th

November 1990 to 1st March 1993. This Court, therefore, clearly rejected the claim of benefit from the date on which the statutory provision was deleted from the statute book.

68. In the case of ***Nestle India Ltd. (supra)***, the respondent milk producers did not pay the purchase tax for the period between 1st April 1996 and 4th June 1997 since the Government had decided to abolish purchase tax for the said period. For the rest of the period, the tax was paid. The State had attempted to recover the purchase tax retrospectively for the aforesaid period. In this background, the claim of the respondents therein before this Court was found to be meritorious.

69. Insofar as the reliance placed by Shri V. Sridharan, learned Senior Counsel, on the judgment of this Court in the case of ***Video Electronics Pvt. Ltd. (supra)*** is concerned, the question was as to whether the State was empowered to grant sales tax exemption to a class of goods. It was held that the classification was permissible, provided that it was not vitiated by colourable exercise of power or

abuse. As such, the said judgment would not be applicable to the facts of the present case.

70. It could thus be seen that in none of the aforesaid cases, the issue as to whether, on account of change in the law, the State was bound to stand by its representation made under the earlier law even when the change in law does not permit it to do so, fell for consideration. As against this, this Court, in a catena of judgments, including two Constitution Bench judgments, a four-Judge Bench judgment and various judgments of learned three judges, have consistently held that promissory estoppel would not apply against the exercise of legislative powers of the State. As such, none of the judgments cited, in our view, would be of any assistance to the cases of the appellants.

71. Insofar as the contention of Shri S. Ganesh, learned Senior Counsel, that the Union should have issued exemption notification as provided under Section 11 of the CGST Act is concerned, we find that under the said provision, a discretion is vested in the Central Government,

which is to be exercised on the recommendations of the GST Council. A writ of mandamus cannot be issued to the Central Government to exercise power under Section 11 of the CGST Act in a particular manner. In any case, it is a matter of policy which has to be determined by the Union/State while taking a decision as to whether it should grant exemption from payment of CGST or make a budgetary allocation for refund of the tax paid. In any case, such power can be exercised by the Central Government only on the recommendations of the GST Council. As already discussed herein above, the Central Government was not bound to continue with a representation made by it in 2003 in view of the change of law by the enactment of the CGST Act. However, in order to partly honour the representation made by it, it has decided to refund 58% of the CGST paid by the entities. It is more than settled that this Court cannot interfere in policy matters of the Government unless such policy is found to be palpably arbitrary and irrational. In that view of the matter, we do

not find that the claim made on the basis of Section 11 of the CGST Act is of any substance.

72. Though we have held that the appellants' claim based on promissory estoppel is without substance, we find that this is not a case wherein it can be said that the appellants' claim is wholly without any substance.

73. The appellants have established their industrial units based on the industrial policy as reflected in the said O.M. of 2003. The policy of the year 2003, in question, was based on the statement made by the Hon'ble Prime Minister during his visit to Uttarakhand. As such, the policy was framed to bring into effect the statement made by the highest executive functionary of the country. Relying on the said policy, the appellants have established their units. Though the appellants may not have a claim in law, we find that they do have a legitimate expectation that their claim deserves due consideration.

74. It will be relevant to refer to the minutes of the meeting of the GST Council dated 30th September 2016, which read thus:

> "25. The Secretary to the Council explained that the Central and State governments had given various incentives of Central Excise and Value Added Tax (VAT) and Central Sales Tax (CST). He pointed out that in the GST regime, such incentives could not be continued as supplies would need to be made on payment of tax in order to permit flow of tax to the destination state. Therefore, a decision would need to be arrived at regarding the treatment of such tax incentive schemes under the GST regime. He observed that one option could be to 'grandfather' such schemes and provide for a budgetary apportionment in the State and the Central budgets for reimbursing the tax paid to those units which enjoyed tax exemption up to a specified period. However, while 'grandfathering' any such scheme, it would need to be kept in mind that unlike VAT and the CST which were origin-based taxes, GST was a destination-based tax and an unconditional reimbursement scheme could lead to double outflow for the origin-state – one by way of transfer of tax to the destination State and the other by way of reimbursement to the supplier. Therefore, the States would need to be careful while devising any

> reimbursement scheme and care could be taken that such reimbursement was limited for supplies made within the State.
>
> 26. The Hon'ble Deputy Chief Minister of Gujarat alluded to examine possible legal complications. The Secretary to the Council pointed out that the agenda note contained certain judgments of the Hon'ble Supreme Court as per which the principle of promissory estoppel would not apply in a case where there was a supervening public equity."

75. It could thus be seen that the GST Council has noticed that the Central and State Governments had given various incentives of Central Excise and Value Added Tax (VAT) and Central Sales Tax (CST) so as to encourage investment in those States. It also took notice of the fact that such incentives could not be continued as supplies would need to be made on payment of tax to permit flow of tax to the destination state. The solution that was suggested was to provide for budgetary apportionment in the State and the Central budgets for reimbursing the tax paid to those units which enjoyed tax exemption up to a specified period.

76. It will be further relevant to note the concerns expressed by the State of Uttarakhand and the State of Jammu & Kashmir in the said meeting, which are as under:

> "28. The Hon'ble Minister from Uttarakhand stated that the Government of India had given an area-based exemption for 10 years and that such exemptions were to continue upto 2020. She observed that the Centre must reimburse such units for the Central taxes as jobs of more than one lakh workers were at stake. The Hon'ble Minister from Jammu and Kashmir stated that his State was in a similar situation as Uttarakhand. The Chairperson observed that once incentive schemes were withdrawn, the taxes paid would be accounted for in the Consolidated Fund of India and 42% of the amount would be devolved to the States. The Centre, therefore, could be expected to only reimburse the units out of the remaining 58% of the fund which was not part of the devolution and the States would also need to correspondingly reimburse such units out of the share of revenue received through devolution."

77. It can thus be seen that the Hon'ble Minister from Uttarakhand had stated that the Government of India had given an area-based exemption for 10 years and that such

exemptions were to continue up to 2020. She was of the view that the Centre must reimburse such units for the Central taxes as jobs of more than one lakh workers were at stake. The Hon'ble Minister from Jammu & Kashmir had also supported the view of the Hon'ble Minister from Uttarakhand. However, the Chairperson of the GST Council, i.e. the Hon'ble Finance Minister of the Union of India, stated that the Centre would only reimburse the units to the extent of 58%. He also expressed that the State would also need to correspondingly reimburse such units out of the share of revenue received through devolution. Accordingly, the following resolution was passed in the said meeting by the GST Council:

> "29. The Council approved the following-
>
> (i) All entities exempted from payment of indirect tax under any existing tax incentive scheme shall pay tax in the GST regime.
>
> (ii) The decision to continue with any incentive given to specific industries in existing industrial policies of States or through any schemes of the Central

Government, shall be with the concerned State or Central Government.

(iii) In case the State or Central Government decides to continue any existing exemption/incentive/deferral scheme, then it shall be administered by way of a reimbursement mechanism through the budgetary route, the modalities for which shall be worked out by the concerned State/Centre."

78. We, therefore, find that in the deliberations of the GST Council itself, it was observed that the States also need to correspondingly reimburse the industrial units which were entitled to exemption under any existing incentive scheme, out of the share of revenue received through devolution, which, as per the Finance Commission, stands at 42%. As a matter of fact, the State of Jammu & Kashmir has issued a notification dated 21st December 2017 thereby resolving to reimburse the remaining 42% of the CGST of the Union. This is limited until the period the Union Scheme is valid.

79. It is further to be noted that the GST Council is a constitutional body. It has powers to make recommendations on wide-ranging issues concerning GST,

including grant of exemptions from the GST. It also has power to make recommendations with regard to special provisions governing North Eastern and Himalayan States. Taking into consideration that the units like the appellants have been established in the Himalayan and North-Eastern States based on the said O.M. of 2003 and that lakhs of persons are employed in such industries, we are of the view that it will be appropriate that such States should also consider to correspondingly reimburse such units out of the share of revenue received by them through devolution from the Central Government. We further find that it will also be appropriate that the GST Council considers making appropriate recommendations to the States in that regard.

80. We, therefore, permit the appellants to make representations to the respective State Governments as well as to the GST Council. We also request the State Governments and the GST Council to consider such representations, if made, in accordance with what has been observed herein above in an expeditious manner.

81. In the result, the appeals are dismissed, save and except the observations made in paragraphs 72 to 80 hereinabove.

82. Pending applications, if any, shall stand disposed of.

83. In the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[B.R. GAVAI]

.....J.
[B.V. NAGARATHNA]

NEW DELHI;
OCTOBER 17, 2022

Annexure A*			
S.No.	**State**	**No. of Benches proposed**	**Location of Benches proposed**
1	**Andhra Pradesh**	3	Vijayawada, Visakhapatnam, Tirupati
2	**Arunachal Pradesh**	Common Bench with Guwahati,	Guwahati
3	**Assam**	1	Guwahati
4	**Bihar**	1	Patna
5	**Chhattisgarh**	2	Raipur, Bilaspur
6	**Delhi**	2	Delhi
7	**Goa**	1	Panaji
8	**Gujarat**	3	Ahmedabad, Surat, Rajkot
9	**Haryana**	2	Gurugram Hisar
10	**Himachal Pradesh**	1	Shimla
11	**Jammu and Kashmir**	1	Jammu & Srinagar on rotational basis
12	**Jharkhand**	1	Ranchi
13	**Karnataka**	3	All three in Bengaluru
14	**Kerala**	3	Thiruvananthapuram, Ernakulam, Kozhikode
15	**Madhya Pradesh**	1	Bhopal
16	**Maharashtra**	7	Mumbai-2, Thane-1, Pune-2, Nagpur-1 and Aurangabad (Chhatrapati Sambhajinagar)-
17	**Manipur**	Common Bench with Guwahati, Assam	Guwahati
18	**Meghalaya**	Common Bench with Guwahati,	Guwahati
19	**Mizoram**	1	Aizawl
20	**Nagaland**		
21	**Odisha**	1	Cuttuck
23	**Punjab**	1	Chandigarh/Mohali
22	**Puducherry**	1	Puducherry
24	**Rajasthan**		
25	**Sikkim**	Common Bench with Kolkata	Kolkata
26	**Tamil Nadu**		
27	**Telangana**	2	Both at Hyderabad
28	**Tripura**	1	Agartala
30	**Uttarakhand**	1	Dehradun
29	**Uttar Pradesh**	5	Lucknow , Varanasi, Ghaziabad, Agra and
31	**West Bengal**	2	Both at Kolkata

*Letters received from States/UTs

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT

From

Sri. M.Girija Sankar, I.A.S.,
Chief Commissioner of State Tax,
Andhra Pradesh.

To

The Additional Secretary,
GST Council Secretariat,
5th Floor, Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi.

CCT's Ref.No.Computer No. 2073931 File No. REV03-12039(31)/41/2023-COMM- 26/05/2023
Sir,

Sub: APGST Act,2017 – Finance Act,2023 - Constitution of GST Appellate Tribunal – Implementation of instructions - Status report – Called for – Submitted – Regarding.

Ref: 1) Letter from Director, GST Council Secretariat, through mail, dated: 18th April,2023.
2) Government of India, Extraordinary Gazette No.2744, dated:21st August,2019.
3) Note approval in File No. REV03-12039(31)/41/2023, dt. 24.03.2023

***

I invite your attention to the subject and references cited, wherein, the GST Council Secretariat, Department of Revenue, Ministry of Finance, Government of India, vide in the reference 1st cited, addressed all the Chief Secretaries/ Advisor of States and Union Territories, with a request to carry out necessary amendments in the Goods & Services Tax Act of respective states expeditiously to enable the benches of GST Appellate Tribunal functional as early as possible.

Accordingly, as both the Houses of the State Legislature are not in session, a draft Ordinance is sent to Government to effect amendment to the relevant provisions of the Andhra Pradesh Goods and Services Tax Act, 2017 (Andhra Pradesh Act 16 of 2017) and for matters connected therewith or incidental thereto.

In this connection, it is to submit that, the Central Government on 21st August, 2019, notified the creation of one State bench at Vijayawada and two Area benches at Visakhapatnam and Tirupati in Andhra Pradesh, and published in the Gazette of India, Extra-Ordinary No.2744, dated: 21st August, 2019.

In this regard, I wish to state that the State of AP has vast geographical area, spread over like a long strip along the East Coast, of about 1000 Km length from North to

South. Further, socio-culturally State has 3 (three) distinct regions called North Coastal Region with Visakhapatnam industrial hub and port city as the epicenter, Central-coastal region with Vijayawada city as the trading hub and Rayalaseema region, Tirupati city as the main industrial hub. Thus, the regions are clustered around three cities viz Visakhapatnam, Vijayawada and Tirupati. Further, the trade & commerce, and service sector is very much growing in these regions. The State has 4.25 lakh registrants under GST Act. Hence, due to long distances from one region to another and large number of GST registrations, there is a great need for establishing 3 (three) State benches to cater to the three regions and render speedy justice. Therefore, I request the GST Council to notify 3 (three) State benches.

The State of Andhra Pradesh requests the GST council to continue the GST appellate Tribunal Benches in the State of Andhra Pradesh as already notified, and requests to amend the notification dated 21st August,2019, re-designating the two 'Area Bench's as 'State Benches' at Visakhapatnam and Tirupathi in the light of amendment made to Section.109 of APGST Act,2017, by notifying total Three State Benches at Vijayawada, Visakhapatnam and Tirupati.

M Girija Shankar I A S
Chief Commissioner

Jurisdiction of GSTAT Benches Proposed in Andhra Pradesh

Sl.No	GSTAT Bench	Tax Divisions	Jurisdictional Area (Districts)
1.	**Visakhapatnam**	1) Vizianagaram, 2) Visakhapatnam-1, 3) Visakhapatnam-2 4) Rajamahendravaram 5) Kakinada	1) Srikakulam, 2) Vizianagaram, 3) Manyam, 4) Alluri Sitharama Raju, 5) Visakhapatnam 6) Anakapalli 7) Kakinada, 8) Dr. B. R. Ambedkar Konaseema and 9) East Godavari
2.	**Vijayawada**	1) Eluru 2) Vijayawada -1 3) Vijayawada-2 4) Vijayawada-3 5) Guntur-1 6) Guntur-2	10) West Godavari, 11) Eluru, 12) Krishna, 13) NTR, 14) Guntur, 15) Palnadu and 16) Bapatla
3.	**Tirupati**	1) Nellore 2) Chittoor 3) Kadapa 4) Kurnool 5) Anantapuramu	17) Prakasam, 18) Sri Potti Sriramulu Nellore, 19) Kurnool, 20) Nandyal, 21) Anantapuramu, 22) Sri Sathya Sai, 23) YSR Kadapa, 24) Annamayya, 25) Tirupati and 26) Chittoor

T-E-18012/4/2023-O/o Comm-TAX&EX

I/143122/2023

GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE COMMISSIONER TAX & EXCISE
ITANAGAR

Dated Itanagar the June, 2023.

To

The Additional Secretary,
GSTC Secretariat,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

Sub: **Constitution of Goods and Services Tax Appellate Tribunal (GSTAT)- reg.**

Ref: Your Letter No. D.O.F No. 224/GOM-GSTAT/GSTC/2022 dtd 6/4/2023.

Sir,

With reference to the subject cited above, I am to inform you that the Govt. of Arunachal Pradesh has decided to prefer appeals before the Goods and Services Tax Appellate Tribunal (GSTAT) Assam State Bench as and when such a Bench has been constituted for the State of Assam.

This is for favour of your kind information.

Yours faithfully,

30/6/2023

(Lobsang Tsering)
Commissioner (Tax, Excise & Narcotics)
Itanagar

I/200973/2023

GOVERNMENT OF ASSAM
FINANCE (TAXATION) DEPARTMENT
JANATA BHAWAN, DISPUR, GUWAHATI-6

eCF No.306050/423 Dated Dispur, the June, 2023

From : Sri Jayant Narlikar, IAS.,
Commissioner & Secretary to the Government of Assam,
Finance (Taxation) Department.

To : The Secretary, GST Council,
Office of the GST Council Secretariat,
5th Floor, Tower-II, Jeevan Bharti Building,
Connaught Circus,
New Delhi-110001

Sub : Constitution of Goods and Service Tax Appellate Tribunal- reg

Ref : D.O.F No.224/GOM-GSTAT/GSTC/2022/8960 dated 06.04.2023.

Sir,

With reference to the subject cited above, I am to inform you that Government has decided to set up a single bench of Goods and Service Tax Appellate Tribunal (GSTAT) in the State of Assam. Further, such State Bench will be located in Guwahati.

Yours faithfully,

Signed by Jayant Narlikar
Date: 21-06-2023 14:24:36
Commissioner & Secretary to the Government of Assam,
Finance (Taxation) Department

Memo eCF No.306050/423-A Dated Dispur, the June, 2023
Copy to :

1. The Principal Commissioner of State Tax, Assam, Kar Bhawan, Dispur, Guwahati-6 for information.
2. The Secretary, Coordination to Chief Secretary, Assam w.r.t. eCR No.1180767.

By orders etc.,

Signed by Arindom Barua
Date: 21-06-2023 14:57:34
Joint Secretary to the Government of Assam,
Finance (Taxation) Department

Dr. Pratima, IAS
Commissioner-cum-Secretary
Department of Commercial Taxes
Bihar, Patna

डॉ0 प्रतिमा, भा.प्र.से.
आयुक्त-सह-सचिव
वाणिज्य-कर-विभाग
बिहार, पटना

सत्यमेव जयते

Department of Commercial Taxes
Vikash Bhawan, Bailey Road
Patna - 800 015
Tel. 0612-2214741
Fax 0612-2219995
E-mail cct@bihar.gov.in

वाणिज्य-कर-विभाग
विकास भवन, बेली रोड
पटना - 800 015
दूरभाष 0612-2214741
फैक्स 0612-2219995
ई-मेल cct@bihar.gov.in

संख्या : 1575

दिनांक : 16/5/23

Subject- Constitution of GSTAT –reg.

Respected Sir,

Please refer to your D.O Letter no-224/GOM-GST AT/GST/2022/8957 dt.06-04-2023 regarding constitution of GST Appellate Tribunal for State of Bihar.

2. In this regard I would like to inform you that effectives corresponding necessary amendments in the Bihar Goods and Services Tax Act, 2017 in view of the amendments regarding establishment of the Goods and Services Tax Appellate Tribunal, recently done in the CGST Act 2017 vide the Finance Act 2023, is under process and it will be notified shortly.

3. Meanwhile, *in principle*, it is agreed that a single bench of the GST Appellate Tribunal Bihar would be constituted at Patna. This bench would have administrative Jurisdiction for the entire State of Bihar. In addition, it is also proposed that, if so required an, additional bench of the GST Appellate Tribunal may also be constituted in future, in such case a request would be made separately.

This is for your kind information.

With warm regards.

16/5/23

(Dr. Pratima)
Commissioner- cum- Secretary,
Commercial Taxes Department,
Bihar, Patna.

To,

Shri Pankaj Kumar Singh
Additional Secretary
GST Council Secretariat
Ministry of Finance
Department of Revenue

Governmet of Chhattisgarh
Commercial Tax Department
Mantralya, Mahanadi Bhawan
Nava Raipur, Atal Nagar

NO. 2119 / 1223/2023 / CT/5. Nava Raipur, Atal nagar, Dated 03/07/2023

To,

Secretary,
Goods and Service Tax Council,
Office of the GST Council Secretariat,
5th Floor, Tower II, Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi-110001

Subject - Intimation for GST Appellate Tribunal benches- reg.

--00—

With regard to subject cited above I am directed to convey that in the State of Chhattisgarh there can be two GSTAT benches whose offices will be situated at Raipur and Bilaspur respectively. Jurisdiction of the Raipur bench will be of the Raipur, Durg and Bastar Revenue Divison and that of Bilaspur bench will be of the Bilaspur and Sarguja Revenue Division.

This is for your kind information and necessary action please.

This issues with the approval of Hon'ble Minister of Commercial Tax.

(Him Shikhar Gupta)
Secretary
Government of Chhattisgarh
Commercial Tax Department

E/2023 Letter

Requirement of State Benches at Delhi reg:-

From : neelam nangio <gstcell.po-dtt@delhi.gov.in> Wed, Jun 28, 2023 05:26 PM
Subject : Requirement of State Benches at Delhi reg:- 49th GSTCM
To : GST Council Secretariat <gstc.secretariat@gov.in>
Cc : akumarsctt@gmail.com

Sir / Madam,

Refernce telephonic call received from GST Council Secretariat.

Tentatively for Delhi State, Two State Benches are required to be constituted for GSTAT. However, actual number shall be confirmed and communicated once the DGST (Second Amendment) Bill, 2023 is passed by Delhi Legislative Assembly.

Regards
O/o Assistant Commissioner
Policy Branch, Trade and Taxes, GNCTD.

GOVERNMENT OF GOA
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
2nd Floor, Goa Rajya Kar Bhavan, Old IPHB Complex,
Near O/o Chief Electoral Officer, Altinho, Panaji Goa Pin code 403001
Tel: 0832-2229225 Fax :0832-2225032
Email: gst-ctax.goa@gov.in Website: www.goacomtax.gov.in
www.goagst.gov.in

CCT/26-10/GSTAT/2023-24/ 743 **Dated: 13th June, 2023**

To,

Pankaj Kumar Singh
The Additional Secretary,
GST Council Secretariat,
5th floor, Tower II, Jeevan Bharati Building,
Connaught Circus, Janpath,
New Delhi – 110001

Sub.: Constitution of GSTAT – reg.
Ref.: D.O.F. No. 224/GOM-GSTAT/GSTC/2022/8954 dated 06/04/2023 addressed to Chief Secretary, Goa.

Sir,

With reference to the subject cited and letter referred above, I am directed to inform as under.

With regards to amendments in Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) ("Goa GST Act") corresponding to amendments made in Central Goods and Services Tax Act, 2017 carried through Finance Act, 2023 (Act 8 of 2023), kindly note that same will be carried out by promulgating an Ordinance to enforce the amendment to the Goa GST Act, as the Legislative Assembly of Goa is not in session. Subsequently, a Bill will be introduced in the

next Assembly session to replace the Ordinance. Proposal for the same is already submitted and at present it is moved to Law Department of the State for vetting.

Regarding constitution of State Benches in the State of Goa, kindly note that Government of Goa, vide U/O No. 1676/F, has approved for single GST Appellate Tribunal State Bench in the State of Goa which will locate at Panaji-Goa.

This is issued with the approval of the Commissioner of State Tax.

Thanking you,

Yours Faithfully

(Sarita S. Gadgil)
Addl. Commissioner of State Tax, Goa

Copy to:

1. P.A. to Chief Secretary, Government of Goa, Secretariat, Porvorim – Goa;
2. Office file;
3. Guard file.

Formation of GST Appellate Tribunal

Mr.Samir Vakil

Wed 6/21/2023 6:01 PM

To:gstc.secretariat@gov.in <gstc.secretariat@gov.in>;

Bcc:Milindkavatkar@gmail.com <Milindkavatkar@gmail.com>; rpraval71@gmail.com <rpraval71@gmail.com>;

Respected Sir,

The 49th meeting of GST Council was held at New Delhi on 18/02/2023. In this meeting, a decision was taken for the formation of "GST Appellate Tribunal". Accordingly, it is decided that three benches of Appellate Tribunal at Ahmedabad, Surat and Rajkot may be constituted in Gujarat.
For your kind information and perusal.

Regards,

Samir Vakil
Chief Commissioner of State Tax,
Gujarat State, Ahmedabad

EXCISE & TAXATION DEPARTMENT, HARYANA
Vanijya Bhawan, Plot No. I-3, Sector 5, Panchkula - 134109
Ph: 0172-2590990 Fax: 0172-2590935
www.haryanatax.gov.in

CFMS No.5648

To

Sh. Saurav Suman Shardool ,
Director (GSTCS),
New Delhi.

Memo No. 446 /GST-II , dated the 27/06/2023

Subject: **Constitution of GSTAT and progress made thereon-reg.**

Ref:- **Your office DO letter No. F.No.224/GoM-GSTAT/GSTC/2022/8950-8980, dated 06.04.2023**

This is with reference to the DO letter on the subject cited above. In this regard, it is brought to your kind notice that the Government has approved Constitution of two State Benches for the State of Haryana. The location of the said State Benches will be at Gurugram and Hisar.

This is for your information and further necessary action please.

Dy. Excise and Taxation Commissioner (GST),
for Excise and Taxation Commissioner
Haryana, Panchkula.

<HP> Regarding GST Appellate Tribunal

From : Rakesh Sharma <aetc-gst-hp@gov.in> Tue, Jun 06, 2023 03:19 PM
Subject : <HP> Regarding GST Appellate Tribunal 49th GSTCM
To : GST Council Secretariat <gstc.secretariat@gov.in>

Dear Sir/Madam,

The State has proposed to set-up one bench in the State located at Shimla.

with warm regards,

Rakesh Sharma
Addl Commissioner of State Tax
Shimla

Government of Jammu and Kashmir
Finance Department
Civil Secretariat, Srinagar/Jammu.
****

The Additional Secretary,
Goods & Services Tax Council Secretariat,
Government of India,
Ministry of Finance,
Department of Revenue.

No: - FD-ET/64/2021-03(C.NO. 40612) Dated:- 01 .06.2023

Subject: - Constitution of Goods and Service Tax Appellate Tribunal(GSTAT)-regarding.

Sir,

Kindly refer to your D.O. No. 224/GOM- FSTAT/FSTC/2022/8950 dated 6.4.2023 addressed to the Chief Secretary, Jammu and Kashmir on the captioned subject. In this connection, I am directed to convey that pursuant to the amendments made in the Central Goods and Services Tax Act, 2017 vide Finance Act2023, a Single State Bench of Goods and Services Tax Appellate Tribunal (GSTAT) may be constituted for entire UT of J&K headquartered at Jammu and Srinagar.

Yours faithfully,

(P. K. Bhat)JKAS
Director General,
Development Expenditure Division I,
Finance Department UT of JK

झारखण्ड सरकार

वाणिज्य–कर विभाग

पत्रांक– वा0कर / संशोधन / 04 / 2023 (खण्ड–1)– 1110 / राँची, दिनांक– 8.6.23

प्रेषक,

राज्य–कर अपर आयुक्त
वाणिज्य–कर विभाग।

सेवा में,

श्री पंकज कुमार सिंह
अपर सचिव,
माल और सेवा कर परिषद् सचिवालय
वित्त मंत्रालय,
राजस्व विभाग, नई दिल्ली।

विषयः– **जी0एस0टी0 न्यायाधिकरण के गठन के संबंध में।**

प्रसंग– भवदीय अर्धसरकारी पत्र संख्या– D.O.F. No. 224/GOM-GSTAT/GSTC/2022, दिनांक 06.04.2023।

महोदय,

निदेशानुसार उपर्युक्त प्रसंगाधीन पत्र के संबंध में सूचित करना है कि जी0एस0टी0 काउंसिल की 49वीं बैठक के उपरांत केन्द्र सरकार के निदेशानुसार झारखण्ड माल और सेवा कर अधिनियम, 2017 में संशोधन हेतु अध्यादेश प्रक्रियाधीन है, झारखण्ड राज्य हेतु जी0एस0टी0 न्यायाधिकरण का एक (1) बेंच पर्याप्त है जिसे राँची में स्थापित किया जायेगा एवं अधिनियम संशोधनोपरान्त राँची में न्यायाधिकरण के गठन की अधिसूचना के पश्चात् तकनीकि सदस्यों का नियमानुसार चयन किया जा सकता है।

विश्वासभाजन

8.6.23

राज्य–कर अपर आयुक्त।

GOVERNMENT OF KARNATAKA
(Department of Commercial Taxes)

No.KGST/CR-33/2018-19

Office of the
Commissioner of Commercial Taxes
(Karnataka), Vanijya Therige Karyalaya,
Gandhinagar, Bengaluru-560009,
Date 20-04-2023.

To:

The Joint Secretary,
GST Council Secretariat,
Department of Revenue,
Ministry of Finance,
Government of India.

Respected Sir,

Sub: Constitution of GST Appellate Tribunal -reg.

Ref: Director, GST Council Secretariat e-mail dated 18.04.2023

* * * *

This is to inform that One (01) State Bench of the GST Appellate Tribunal was notified for creation in Bengaluru as per the Notification No.S.O.3009(E) dated:21-08-2019 issued by the Department of Revenue, Ministry of Finance dated:21-08-2019. Further, two (02) Area Benches of the GST Appellate Tribunal were notified for creation, both in Bengaluru, vide Notification No.S.O.4332(E) dated: 29-11-2019 issued by Department of Revenue, Ministry of Finance Government of India. Both Notifications were issued by the Central Government under sub-Section (6) of Section 109 of the Central Goods and Services Tax Act, 2017 on the recommendation of GST Council.

The State of Karnataka requests the Council to continue the number of Benches in the State of Karnataka as already notified but, to amend the Notification dated:29-11-2019 by re-designating the two "Area Bench"es as "State Bench"es at Bengaluru in light of the amendment to Section 109 of the CGST Act.

Yours faithfully,

(C. SHIKHA)
Commissioner of Commercial Taxes,
(Karnataka), Bengaluru.

Commissioner of Commercial Taxes
Karnataka, Bangalore.

GOVERNMENT OF KARNATAKA
(Department of Commercial Taxes)

No.KGST/CR-33/2018-19

Office of the
Commissioner of Commercial Taxes
(Karnataka), Vanijya Therige Karyalaya,
Gandhinagar, Bengaluru-560009,
Date 20-04-2023.

To:

The Joint Secretary,
GST Council Secretariat,
Department of Revenue,
Ministry of Finance,
Government of India.

Respected Sir,

Sub: Constitution of GST Appellate Tribunal-reg

Ref: Director, GST Council Secretariat e-mail dated 18.04.2023

* * * *

This is with reference to the DO letter F.No.224/GoM-GSTAT/GSTC/2022/8950-8980 dated:06-04-2023 on the subject of the Constitution of GST Appellate Tribunal consequent to the recommendation made in the 49th GST Council Meeting and necessary amendments made in the CGST Act vide Finance Act, 2023. The States were asked to carryout necessary amendments in the SGST Act and to inform the status regarding the said amendments.

In this regard, it is informed that, since the Karnataka Legislature is not in session, necessary steps have been taken to promulgate an ordinance in this regard. Once the ordinance is issued, the same will be communicated immediately.

Yours faithfully,

(C. SHIKHA)
Commissioner of Commercial Taxes,
(Karnataka), Bengaluru.

Commissioner of Commercial Taxes
Karnataka, Bangalore.

GOVERNMENT OF KARNATAKA
(Department of Commercial Taxes)

No.KGST/CR-33/2018-19

Office of the
Commissioner of Commercial Taxes
(Karnataka), Vanijya Therige Karyalaya,
Gandhinagar, Bengaluru-560009,
Date 27-06-2023.

To:
The Joint Secretary,
GST Council Secretariat,
Department of Revenue,
Ministry of Finance,
Government of India.

Respected Sir,

Sub: Constitution of GST Appellate Tribunal –jurisdiction of the State Benches of Karnataka - reg.

Ref: 1. Notification No.S.O.3009(E) dated:21-08-2019
2. Notification No.S.O.4332(E) dated: 29-11-2019
3. Director, GST Council Secretariat e-mail dated 18.04.2023
4. This office letter of even no. dated 20-04-2023.

* * * *

This is to inform that One (01) State Bench of the GST Appellate Tribunal was notified for creation in Bengaluru as per the Notification No.S.O.3009(E) dated:21-08-2019 issued by the Department of Revenue, Ministry of Finance dated:21-08-2019. Further, two (02) Area Benches of the GST Appellate Tribunal were notified for creation, both in Bengaluru, vide Notification No.S.O.4332(E) dated: 29-11-2019 issued by Department of Revenue, Ministry of Finance Government of India. Both Notifications were issued by the Central Government under sub-Section (6) of Section 109 of the Central Goods and Services Tax Act, 2017 on the recommendation of GST Council.

The State of Karnataka had requested, vide letter dated 20.04.2023, the Council to continue the number of Benches in the State of Karnataka as already notified but, to amend the Notification dated:29-11-2019 by re-designating the two "Area Bench"es as "State Bench"es at Bengaluru in light of the amendment to Section 109 of the CGST Act.

In continuation, it is requested to notify that all the above three State benches would have the jurisdiction of the entire State of Karnataka.

Yours faithfully,

27/6/23

(C. SHIKHA)
Commissioner of Commercial Taxes,
(Karnataka), Bengaluru.
Commissioner of Commercial Taxes
Karnataka, Bangalore.

Office of the Commissioner of State Tax
State Goods and Services Tax Department
Tax Towers, Karamana, Thiruvananthapuram.
E-mail: csectioncct.ctd@kerala.gov.in
Ph: 0471-2785230
Dated: 05-07-2023

From

The Commissioner of State Tax
Kerala

To

The Additional Secretary
GST Council Secretariat
5th Floor, Tower-II, Jeevan Bharti Building
Janpath Road, Connaught Place, New Delhi

Sir

Sub: Constitution of Appellate Tribunal and Benches thereof- Amendments in SGST Act -reg:-

Ref: 1. Email dtd 03.05.2023 from the GST Council Secretariat
2. Government letter No. D3/10/2023-TAXES dated 04.07.2023

In response to the cited email, it is hereby informed that the Government of Kerala recommends the establishment of three state benches in the state, located in Thiruvananthapuram, Ernakulam, and Kozhikode. This arrangement will allow for the handling of appeals from specific districts by each respective bench. Appeals from the districts of Thiruvananthapuram, Kollam, Pathanamthitta, Alappuzha, and Kottayam will be dealt with by the bench in Thiruvananthapuram. Appeals from the districts of Ernakulam, Idukki, Thrissur, and Palakkad will be handled by the bench in Ernakulam. Appeals from the districts of Malappuram, Kozhikode, Wayanad, Kannur, and Kasaragod will be addressed by the bench in Kozhikode.

/226163/2023

It is also informed that the government is in the process of issuing an ordinance to implement the required changes to the Kerala State Goods and Services Tax Act, 2017, in accordance with the recommendations of the GST Council. The issuance of the ordinance is expected to take place during the current week.

Yours faithfully,

COMMISSIONER

Government of Maharashtra
Finance Department
Mantralaya, Main Building, 5th Floor,
HutatmaRajguru Chowk, Madam Kama Marg,
Mantralaya, Mumbai-32

Misc-2023/C.R.20/Taxation-1 Date-07/07/2023

To,

Pankaj Kumar Singh,
Additional Secretary,
GST Council Secretariat,
Department of Revenue, Ministry of Finance,
Government of India, New Delhi-110 001.

Sub: Regarding Constitution of GSTAT.

Ref: Goods and Services Tax Council Secretariat letter no. D.O.F. No. 224/GOM-GSTAT/GSTC/2022Dated 06.04.2023.

Respected Sir,

This is with reference toletter dated 06.04.2023 from Goods and Services Tax Council Secretariatreferred above at Sr. No. 2. As per the letter, consequent to the recommendation made in the 49th Meeting of GST Council, necessary amendments for establishments of the Goods and Services Tax Appellate Tribunal (GSTAT) have been made in the CGST Act vide the Finance Act, 2023. It is emphasisednow to work to make thebenches of GSTAT functional as early as possible, for which cooperation from the State in the following is requested.

(A) To make necessary amendments in the Maharashtra Goods and Services Tax Act, 2017 as recommended by the Goods and Services Tax Council.

(B)Government's views are sought regarding establishment of number of State Benches of Goods and Services Tax Appellate Tribunal (GSTAT) and their location in the State of Maharashtra along with their jurisdiction.

2. As per GST Council recommendation, necessary amendments in Maharashtra Goods and Services Tax Act, 2017 are being carried out.

3. Thus, with reference to the Council Secretariat request, the proposal regarding number of State Benches of Goods and Service Tax Appellate Tribunal (GSTAT) in the State of Maharashtra and their locations is submitted as under:

a) High Court in the State of Maharashtra and their Benches: In the State of Maharashtra, Bombay High Court of Judicature is located at Mumbai and its benches are located at Nagpur and Aurangabad.

b) At present, in Maharashtra there are 8 benches of Maharashtra Sales Tax Tribunal (MSTT) and 2 Benches of Customs Excise and Service Tax Appellate Tribunal (CESTAT).

c) Maharashtra has 12.02% registered taxpayers of the total registered taxpayers in the country.

Total number of taxpayers in Maharashtra State (Number of taxpayers allocated to Central Tax and State Tax Administration)

Sr. No.	State Tax Zone	Number of alive Taxpayers	
1	Mumbai-1	1,23,740	Mumbai-4,77,768
2	Mumbai-2	2,01,177	
3	Mumbai-4	1,52,851	
4	Thane	2,99,155	Thane-2,99,155
5	Pune	2,76,885	Pune-4,48,541
6	Kolhapur	1,71,656	
7	Nagpur	2,30,260	Nagpur-2,30,260
8	Nashik	2,31,140	Nashik-2,31,140
Total		**16,86,864**	

d) Further, during Financial Year 2022-23, of the total GST collection (excluding IGST on imports), 20.40% revenue is collected in Maharashtra. As called economic powerhouse of the country, many of the corporates have their headquarters in Maharashtra and their operations run from the State. Accordingly, the disputed tax in litigated cases need to be unclogged at the earliest so that the Centre and State gets the due revenue stuck in tax arrears.

e) Various tax proceedings in the state of Maharashtra: Various types of taxation proceedingsby the central and state tax administrations are going on in the state of Maharashtra against approximately 3 to 4% of the total 16 lakh taxpayers in the state, i.e. about 60,000 taxpayers. It is estimated that nearly 25% i.e. approximately 15000 cases may be filed at the second level of appeal i.e. before Goods and Services Tax Appellate Tribunal (GSTAT).

4. In view of the above,it is recommended that the number of State Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) in the State of Maharashtra and their locations should be as under.

Sr. No.	State Benches and their Locations u/s 109(4)
1.	Mumbai-2
2.	Thane-1
3.	Pune-2
4.	Nagpur-1
5.	Aurangabad (Chhatrapati Sambhajinagar)-1
	Total-7 State Benches

5.It is further recommended that the jurisdiction of the State Benchesproposedabove should be kept as the whole of State of Maharashtra.

6. Hence, it is proposed from Maharashtra to establish 7 State Benches of Goods and Services Tax Appellate Tribunal (GSTAT) under Section 109 (4) of the Central Goods and Services TaxAct, 2017in the State of Maharashtra with locationsas shown in the above table and with jurisdiction as whole of Maharashtra.

(Shaila A.)
Secretary, Finance Department,
Government of Maharashtra,

Re: [Gstc-NodalOfficers] REMINDER: Constitution of GSTAT and progress made thereon- reg.

From : Department of Taxes Manipur <tax-mn@nic.in> Fri, Jul 07, 2023 03:53 PM

Subject : Re: [Gstc-NodalOfficers] REMINDER: Constitution of GSTAT and progress made thereon- reg. 49th GSTCM

To : GST Council Secretariat <gstc.secretariat@gov.in>

Cc : mercinapanmei@gmail.com

Respected Sir/Madam,
I am directed to inform you that for the Constitution of GST Appellate Tribunal and constitution of State Benches consequent to the recommendation made in the 49th GST Council Meeting for **Manipur** the State government is preferred to club the Manipur State Bench with the **State Bench constituted at Guwahati, Assam** and heard the appeal by the State Bench constituted at Guwahati, Assam.

Regarding the amendment in the Manipur GST Acts for the Constitution of GST Appellate Tribunal and constitution of State Benches, a proposal has been sent to the government for amendment of Manipur GST Act through **Ordinance** since the house of the Manipur Legislative Assembly is not in session.

With regards
Y. Indrakumar Singh
Asst. Commissioner of Taxes
Government of Manipur

From: "GST Council Secretariat" <gstc.secretariat@gov.in>
To: "GSTC Nodal Officers Group" <gstc-nodalofficers@lsmgr.nic.in>
Sent: Monday, May 8, 2023 2:07:43 PM
Subject: [Gstc-NodalOfficers] REMINDER: Constitution of GSTAT and progress made thereon- reg.

Respected Sir/Madam,

Please refer to the trail mail wherein it was requested to inform the status of amendment in the SGST/UTGST Acts w.r.t the Constitution of GST Appellate Tribunal and constitution of State Benches consequent to the recommendation made in the 49th GST Council Meeting.

In this regard, it is once again requested to update the current status of amendment in the SGST/UTGST Acts and constitution of State Benches.

Thanks & Regards

Priya Sethi

Superintendent GSTCS

From: "GST Council Secretariat" <gstc.secretariat@gov.in>
To: gstc-nodalofficers@lsmgr.nic.in
Cc: "Ashima Bansal" <ashima.irs@gov.in>, "Saurav Suman Shardool" <Saurav.shardool@gov.in>
Sent: Tuesday, April 18, 2023 3:08:50 PM
Subject: [Gstc-NodalOfficers] Constitution of GSTAT and progress made thereon- reg.

Respected Madam/Sir,

This is in reference to this office D.O. letter F.No. 224/GoM-GSTAT/GSTC/2022/8950-8980 dated 06.04.2023 on the subject of Constitution of GST Appellate Tribunal consequent to the recommendation made in the 49th GST Council meeting and necessary amendments made in CGST ACT vide Finance Act, 2023.

In this regard, it is requested to inform the status regarding amendments in the SGST Acts and also regarding the constitution of State Benches. The status would be discussed in the upcoming National Co-ordination meeting between Central and Sate Tax Officials to be held in Delhi on 24th April, 2023.

Regards,

Saurav Suman Shardool
Director (GSTCS)
--

माल और सेवा कर परिषद
GOODS AND SERVICES TAX COUNCIL

GST Council Secretariat

5th Floor, Tower II, Jeevan Bharti Building

Janpath Road, Connaught Place, New Delhi-110 001

Email: gstc.secretariat[at]gov.in

Telephone No. : 011-23762656

--

GST Council Secretariat

5th Floor, Tower II, Jeevan Bharti Building

Janpath Road, Connaught Place, New Delhi-110 001

Email: gstc.secretariat[at]gov.in

Telephone No. : 011-23762656

Gstc-NodalOfficers mailing list -- gstc-nodalofficers@lsmgr.nic.in
To unsubscribe send an email to gstc-nodalofficers-leave@lsmgr.nic.in

GOVERNMENT OF MADHYA PRADESH
COMMERCIAL TAX DEPARTMENT
MANTRALAYA, VALLABH BHAVAN, BHOPAL-462004

No. 1694/1439 / 2019 / 1 / V

Dated 6th July, 2023

To
Mr Pankaj Kumar Singh
Additional Secretary
Goods and Service Tax Council Secretariat
Government of India
Ministry of Finance
Department of Revenue

Subject - Constitution of GSTAT - reg.

Reference - Your D.O.F No. 224/GOM-GSTAT/GSTC/2022/8961 Dated 6th April, 2023.

In reference to your D.O.letter dated 6th April, 2023, the Government of Madhya Pradesh requests to constitute a State bench of GSTAT at Bhopal having jurisdiction over whole of the State of Madhya Pradesh.

Dipali Rastogi

(Dipali Rastogi)
Principal Secretary
Government of Madhya Pradesh
Commercial Tax Department

GOVERNMENT OF MEGHALAYA
EXCISE: REGISTRATION: TAXATION & STAMPS DEPARTMENT

No. ERTS (T) 26/2018/534 **Dated Shillong, the 20th June, 2023.**

From : Shri T. K. Marak,
Deputy Secretary to the Government of Meghalaya,
Excise, Registration, Taxation and Stamps Department.

To : The Additional Secretary,
Goods & Services Tax Council Secretariat,
Government of India, Ministry of Finance Department of Revenue,
5th Floor Tower II, Jeevan Bharati Building,
Connaught Circus, Janpath, New Delhi-110001.

Subject : Creation of State Bench of GST Appellate – Regarding.

Reference : **1) Letter D.O.F. No. 224/GOM/GSTAT/GSTC/2022, dt. 6.4.2023**
2) Letter No. ERTS (T) 18/2018/48, dt. 19.9.2019.

Sir,

I am directed to refer to the letter quoted above on the subject and to request you to kindly designate the State Bench located at Guwahati, Assam, constituted under Sub-section (4) of Section 109 of the CGST Act, 2017, as the GST Appellate Tribunal to hear appeals under Sub-section (5) of Section 109 of the same Act for the State of Meghalaya.

However, appeals if any against the decisions of the Appellate Tribunal shall lie before the Hon'ble High Court of Meghalaya.

This cancel's this Department's letter issued earlier vide No.ERTS(T)26/2018/523 dated 8.6.2023.

Yours faithfully,

Deputy Secretary to the Govt. of Meghalaya
Excise, Registration, Taxation and Stamps Department

M.No. ERTS (T) 26/2018/534-A **Dated Shillong, the 20th June, 2023.**

Copy to:

1. Private Secretary to Minister i/c Taxation etc. for kind information of the Minister.
2. The Commissioner of Taxes, Meghalaya, Shillong with reference to letter No.CTAS-6/2019/65, Dt.19.05.2023 for kind information.

By Order etc.,

Deputy Secretary to the Govt. of Meghalaya
Excise, Registration, Taxation and Stamps Department

GST Amendment and State Bench

From : Lalhawngliana <comtax.azl-mz@nic.in> Thu, Jun 08, 2023 01:38 PM
Subject : GST Amendment and State Bench 1 attachment
To : GST Council Secretariat <gstc.secretariat@gov.in>
Cc : Ht Mawia <ht.mawia@gov.in>, HK LALHAWNGLIANA <mahawnga.hk@gov.in>

Sir/Madam,

With regards to State GST amendment, the State Legislature of Mizoram will be sitting only in August, so proposal has been submitted to the Govt. to promulgate the amendment through Ordinance. The proposal is yet to be vetted by Law Dept., Govt. of Mizoram. After vetting by the Law Dept, it will be sent for Ordinance.

With regards to State Bench, letter was sent to the GSTC Secretariat in August, 2019, stating our desire to have a bench in Aizawl, Mizoram. A copy is enclosed for reference.

Regards,
o/o the Commissioner of State Tax
Government of Mizoram

State Bench letters-8.pdf
313 KB

GOVERNMENT OF ODISHA
FINANCE DEPARTMENT
****

No. FIN-CT1-TAX-0015-2023 15151 **/F., Date-** 22.05.2023

From

Saumyajit Rout,
Joint Secretary to Government

To

Sri Pankaj Kumar Singh
Additional Secretary
Office of the GST Council Secretariat,
Department of Revenue, Ministry of Finance,
Government of India,
5th Floor, Tower II, Jeevan Bharti Building, Janpath Road,
Connaught Place, New Delhi-110 001

Email – gstc.secretariat@gov.in

Ref: Your D.O.F No. 224/GOM-GSTAT/GSTC/2022/8967 dated 6th April, 2023

Sub: Constitution of GSTAT-reg.

Sir,

In inviting a reference to your D.O.F No. 224/GOM-GSTAT/GSTC/2022/8967 dated 6th April, 2023 on the above subject, I am directed to request that the State Bench of GSTAT may be established at Cuttack with jurisdiction over the entire State of Odisha.

Further, regarding amendment of the Odisha Goods and Services Act, 2017, it is pertinent to indicate here that the Odisha Legislative Assembly is not in session at present. The Department is taking steps for amendment of the OGST Act, 2017 pertaining to the provision of GSTAT along with other amendments as recommended by the GST Council in line with Finance Act, 2023 which will be placed immediately in the next session of the Odisha Legislative Assembly expected during June-July, 2023.

Yours faithfully,

Saumyajit Rout

Joint Secretary to Government

Memo No. 15152 **/F., Date** 22.05.2023

Copy forwarded the P.S. to Principal Secretary, Finance Department for kind information of Principal Secretary.

22/5/2023

Joint Secretary to Government

Memo No. 15153 **/F., Date** 22.05.2023

Copy forwarded the Commissioner of Commercial Taxes & GST, Odisha, Cuttack for kind information.

22/5/2023.

Joint Secretary to Government

Office of Commissioner of State Tax, Punjab

Excise and Taxation Bhawan, Sector 69, S.A.S Nagar(Mohali)

To

The Joint Secretary

GST Council Secretariat

New Delhi

No. 297 Dated 07/7/2023.

Subject: Constitution of GST Tribunal in State. -reg.

Respected Madam

It is to inform that Punjab proposes to establish single state bench GST Tribunal located at Chandigarh/Mohali with jurisdiction over whole of the State.

This issues with the approval of competent authority.

Deputy Commissioner of State Tax (GST)

Punjab

GOVERNMENT OF PUDUCHERRY
COMMERCIAL TAXES DEPARTMENT
***

No.1944/CT/HQ/2023 Puducherry, dt.04.07.2023

To

The Additional Secretary,
GST Council Secretariat,
New Delhi.

Sir,

Sub: Constitution of one State Bench of GSTAT in the UT of Puducherry – Requested – Reg.

Ref: D.O. F. No.224/GOM-GSTAT/GSTC/2022/8968 dt.06.04.2023 of the Addl. Secretary, GSTC.

***

With reference to the letter cited, I am to request that **one** State Bench of GST Appellate Tribunal may be constituted in the UT of Puducherry. The State Bench is to be located at Puducherry and shall have jurisdiction over the whole of the UT of Puducherry.

Yours faithfully,

(L. Mohamed Mansoor)
Commissioner of State Tax
-cum- Addl. Secretary to Govt.,(CT)

GOVERNMENT OF SIKKIM
FINANCE DEPARTMENT, COMMERCIAL TAXES DIVISION
Head Office – Deorali, Gangtok

Reference no. 197/CTA Dated: 22-06-2023

To

The Additional Secretary,
GST Council Secretariat, Department of Revenue,
Ministry of Finance, Government of India,
8th Floor, Tower-II, Jeewan Bharati Building
Connaught Place, New Delhi-110001.

Subject: **Constitution of GST Appellate Tribunal**

Sir,
In reference to the letter to the Chief Secretary vide DOF No. 224/GOM-GSTAT/GSTC/2022/8971 Dated 6th April 2023 on the subject mentioned above, I have been directed to convey the decision of the State Government that the appeal against order of Appellate Authority or Revisional Authority of the State of Sikkim may be heard by State Bench of GST Appellate Tribunal located at Kolkata, constituted under sub-section (4) of section 109 of the Central Goods & Services Tax Act, 2017.

Nevertheless, in event of increase in numbers of appeals against order of Appellate Authority or Revisional Authority of the State of Sikkim in future, the State Government of Sikkim will exercise the privilege of requesting the GST Council for constitution of State Bench of GST Appellate Tribunal for the State of Sikkim in Gangtok, please.

Thanking you,

Yours sincerely,

Commissioner of Commercial Taxes

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT

From
Smt. Neetu Prasad, I.A.S.,
Commissioner of Commercial Taxes
Telangana State,
Nampally, Hyderabad.

To
The Additional Secretary
Goods & Services Tax Council Secretariat
New Delhi.

CCT's Ref No. A(1)/33/2019, Date: -06-2023

Sir,

Sub:- Revenue (CT) Department - Government of Telangana - Constitution of State Benches of Goods & Services Tax Appellate Tribunal - Certain information Called for - Furnished – Regarding.

Ref:- 1. From the Additional Secretary of Goods & Services Tax Council, Secretariat, D.O.F No.224/GOM-GSTAT/GSTC/2022, Dt:6-4-2023.
2. Commissioner of State Tax, Ref No. CCT's Ref. No.A(1)/33/2019, Dt:27.05.2023.
3. CCT's Ref. No.A(1)/33/2019, Dt:30.05.2023.

*****

Vide reference 1st cited, the State of Telangana was requested to furnish the information related to number of State benches of GST Appellate Tribunal required in Telangana State.

In this regard, the letter of Chief Secretary & Special Chief Secretary to Government, Revenue(CT & Excise) is attached for your perusal and necessary action.

Yours faithfully

Commissioner(ST)

GOVERNMENT OF TELANGANA
REVENUE (CT.II) DEPARTMENT

Letter.No.A(1)/33/ 2019, dated:30.05.2023,

From

The Chief Secretary & Special Chief Secretary to Government,
Revenue (CT & Ex.) Department,
Telangana State,
Hyderabad.

To

The Additional Secretary
Goods & Services Tax Council Secretariat,
New Delhi.

Sir,

Sub:- Revenue (CT) Department - Government of Telangana Constitution of State Benches of Goods & Services Tax - Appellate Tribunal - Certain information - Called for - Furnished – Regarding.

Ref:- 1. From the Additional Secretary of Goods & Services Tax Council, Secretariat, D.O.F No.224/GOM-GSTAT/GSTC/2022, Dt:6-4-2023.
2. Commissioner of State Tax, Ref No. CCT's Ref. No.A(1)/33/2019, Dt:27.05.2023.

*****

I am directed to invite your attention to the reference 1st cited and to furnish the information related to number of state benches of GST Appellate Tribunal in so far as Telangana State is concerned, for taking necessary further action in the matter.

In this regard, it is requested to constitute two(2) State benches of GST Appellate Tribunal at Hyderabad. The jurisdiction of each bench is attached as annexure.

Yours faithfully
Sd/-
Chief Secretary & Special Chief Secretary

Copy to:

The Commissioner of State Tax, Telangana State, Hyderabad.
The PS to Chief Secretary to Government, Telangana. State, Hyderabad.
SF/SC.,

JURISDICTION OF TELANGANA GST APPELLATE TRIBUNAL

Bench	Jurisdiction (Districts)	Corresponding CT Divisions(Indicative)	Location of the bench
Telangana GST Appellate Tribunal -I	• Medchal-Malkajgiri • Ranga reddy • Vikarabad • Adilabad • Kumaram bheem Asifabad • Mancherial • Nirmal • Nizamabad • Jagitial • Peddapalli • Kamareddy • Rajanna Sircilla • Karimnagar • Jayashankar Bhupalpally • Sangareddy • Medak • Siddipet • Warangal • Hanamkonda • Jangoan • Mulugu • Bhadradri Kothagudem • Khammam • Mahabubabad	• Hyderbad Rural • Saroornagar • Nizamabad • Warangal • Karimnagar • Adilabad	Hyderabad
Telangana GST Appellate Tribunal -II	• Hyderabad • Suryapet • Nalgonda • Yadadri Bhuvanagiri • Narayanpet • Mahaboobnagar • Nagarkurnaool • Wanaparthy • Jogulamba Gadwal	• Abids • Charminar • Punjagutta • Begumpet • Secunderbad • Nalgonda	Hyderabad

Re: [Gstc-NodalOfficers] Constitution of GSTAT and progress made thereon- reg.

From : Ashin Barman <gst.tax-tr@gov.in> Thu, Apr 20, 2023 10:18 AM
Subject : Re: [Gstc-NodalOfficers] Constitution of GSTAT and progress made thereon- reg. 49th GSTCM
To : GST Council Secretariat <gstc.secretariat@gov.in>

Respected Sir,

I am directed to inform you that the TSGST (6th Amendment) Bill, 2023 has been drafted and has been sent to the State Law Department for vetting. Constitution of State Bench would also be taken up accordingly. We have already informed the Council Secretariat in 2019 that the State Government desires location of the State Bench in the State Capital.

With Regards,

Ashin Barman
GST Nodal Officer, Tripura
Mobile: 9436458189

From: "GST Council Secretariat" <gstc.secretariat@gov.in>
To: gstc-nodalofficers@lsmgr.nic.in
Cc: "Ashima Bansal" <ashima.irs@gov.in>, "Saurav Suman Shardool" <Saurav.shardool@gov.in>
Sent: Tuesday, April 18, 2023 3:08:50 PM
Subject: [Gstc-NodalOfficers] Constitution of GSTAT and progress made thereon- reg.

Respected Madam/Sir,

This is in reference to this office D.O. letter F.No. 224/GoM-GSTAT/GSTC/2022/8950-8980 dated 06.04.2023 on the subject of Constitution of GST Appellate Tribunal consequent to the recommendation made in the 49th GST Council meeting and necessary amendments made in CGST ACT vide Finance Act, 2023.

In this regard, it is requested to inform the status regarding amendments in the SGST Acts and also regarding the constitution of State Benches. The status would be discussed in the upcoming National Co-ordination meeting between Central and Sate Tax Officials to be held in Delhi on 24th April, 2023.

Regards,

Saurav Suman Shardool
Director (GSTCS)
--

माल और सेवा कर परिषद
GOODS AND SERVICES TAX COUNCIL

GST Council Secretariat

5th Floor, Tower II, Jeevan Bharti Building

Janpath Road, Connaught Place, New Delhi-110 001

Email: gstc.secretariat[at]gov.in

Telephone No. : 011-23762656

UpdateSTAT Regarding

From : Sunita Pandey <sunitapandey.gst@uk.gov.in> Tue, Jun 06, 2023 04:04 PM
Subject : UpdateSTAT Regarding 49th GSTCM
To : GST Council Secretariat <gstc.secretariat@gov.in>
Cc : dc1rudrapur@yahoo.com, capri gupta <capri_gupta@yahoo.co.in>, Ishwar Singh Brijwal <isbrijwal.gst@uk.gov.in>

Respected Sir / Madam,
As inquired over the phone call i am directed to communicate that StateTax department has sent its proposal for establishment of STAT to Government of Uttarakhand which is still pending at Government level.As per our proposal only one branch with location at Dehradun is proposed . For you kind information and updation please.
Thanks and Regards
Dr Sunita Pandey
Joint Comm & Nodal Officer
State Tax , Uttarakhand

Re: Constitution of GSTAT - reg.

From : upctres2@gmail.com Fri, May 26, 2023 01:29 PM
Subject : Re: Constitution of GSTAT - reg. 49th GSTCM
To : GST Council Secretariat <gstc.secretariat@gov.in>
Cc : Ashima Bansal <ashima.irs@gov.in>

Respected Sir,

With reference to the trailing mail, it is to inform that during the 39th GST Council Meeting held on 14.03.2020, Agenda Item 6: Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Uttar Pradesh was placed before the GST Council. With regards to the agenda item, it was decided by the Council that-

" ***16. For Agenda item 6, the Council approved the proposal for creating State Bench of Goods and Services Tax Appellate Tribunal for the State of Uttar Pradesh at Allahabad and 4 Area Benches at Ghaziabad, Lucknow, Varanasi and Agra."***

Consequently in the 40th GST Council Meeting dt 12.06.2020, it was decided by the GST Council that-

" ***16.4. Accordingly, the proposal for creating the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Uttar Pradesh i.e State Bench at Lucknow and 04 Area Benches at Varanasi, Ghaziabad, Agra and Prayagraj was considered and approved by the Council."***

Hence as decided earlier in the GST Council Meetings held on 14.03.2020 and 12.06.2020, the State Benches of GSTAT in U.P. have been proposed to be setup in Lucknow , Varanasi, Ghaziabad, Agra and Prayagraj.

Kindly acknowledge the same.

This mail is being sent with the approval of Commissioner, State Tax, U.P.

Regards,
Paritosh Kumar Mishra
Deputy Commissioner(GST)
State Tax HQ, Lucknow.

On Thu, 25 May 2023 at 11:51, Commissioner, Commercial Tax, UP <ctcomhqlu-up@nic.in> wrote:

From: "GST Council Secretariat" <gstc.secretariat@gov.in>
To: "Commissioner, Commercial Tax, UP" <ctcomhqlu-up@nic.in>, "Hari Lal Prajapati" <hari.2371976@gov.in>
Cc: "Ashima Bansal" <ashima.irs@gov.in>, "Saurav Suman Shardool" <Saurav.shardool@gov.in>
Sent: Thursday, May 25, 2023 11:47:21 AM
Subject: Constitution of GSTAT - reg.

Dear Sir,

Reference is taken to the D.O letter. dated 6th April 2023 issued by Additional Secretary, GSTC Secretariat (copy enclosed) wherein the cooperation of the States was requested to initiate the process for making the benches of GSTAT functional at the earliest. In this regard, it is once again requested that necessary steps may please be taken at the earliest to amend the SGST Act and also to identify the location and jurisdiction of the State benches.

Thanks, and Regards

GST Council Secretariat

GST Council Secretariat

5th Floor, Tower II, Jeevan Bharti Building

Janpath Road, Connaught Place, New Delhi-110 001

Email: gstc.secretariat[at]gov.in

Telephone No. : 011-23762656

KHALID AIZAZ ANWAR, I.A.S.
COMMISSIONER
COMMERCIAL TAXES, WEST BENGAL
14, BELIAGHATA ROAD, KOLKATA - 700015
Tel : 033 7122-1003,
Email : cct.ctax@nic.in

No. 11/C

Date : 08.05.2023

To,
The Additional Secretary,
Goods & Services Tax Council Secretariat
Ministry of Finance
Government of India

Subject: Request for Constitution of State Benches of the GST Appellate Tribunal (GSTAT) for exercising jurisdiction throughout the State of West Bengal

Sir,

Please refer to D.O. letter F.No. 224/GoM-GSTAT/GSTC/2022/8950-8980 dated 06.04.2023 soliciting request of the concerned State Government for constitution of State Benches of the GSTAT subsequent to the amendment made in the CGST Act in the Finance Act, 2023.

It may kindly be noted in this regard that, GST Council approved the request of the State for constitution of the State Bench of West Bengal and its two Area Benches at Kolkata in terms of the pre-amended GSTAT provisions in its 35th Meeting held on 21.06.2019.

However, subsequent to the aforesaid amendment in the Finance Act, 2023, this is to state that, the State requests for constitution of 02(two) State Benches to be located at Kolkata, for the time being, for exercising jurisdiction throughout the State of West Bengal.

Thanking You,

Yours faithfully,

Khalid Aizaz Anwar
Commissioner, State Tax,
West Bengal

Khalid Aizaz Anwar, IAS
Commissioner
Commercial Taxes West Bengal

Annexure to Agenda Item 5 on Report of GoM on Casinos, Race Courses and Online Gaming

SECOND REPORT

GROUP OF MINISTERS

On

Casinos, Race Courses and Online Gaming

December, 2022

Table of Contents

I. Background:

A Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming was constituted vide OM dated 24.05.2021 based on the recommendation of the GST Council in its 42nd meeting held on 5th & 12th October, 2020. In the 45th meeting of the GST Council, held on the 17th September, 2021, the Council was of the view that the said GoM may examine all issues, including those around rates involved in online gaming, horse racing and casinos. The GoM was reconstituted on 10th February, 2022, with Chief Minister of Meghalaya as Convener with the existing Terms of Reference.

2. GoM report and decision of the GST Council:

2.1 The GoM submitted its report and it was placed before the GST Council in its 47th meeting held on 28th and 29th June, 2022. [**Annexure I**].

2.2 During the said GST Council meeting, the Convenor, Chief Minister of Meghalaya presented the report and explained that the GoM had looked into following three major aspects:

- What rate should be applied to these three different sectors; whether it should be 18% or 28%?
- Whether GST should be charged on the commission charged by the organizers or should it be charged on the entire value of the stakes?
- Casinos involve a bouquet of games, with different forms of betting, with interplay of multiple factors and different activities such as entry fee, fees on the food and beverages consumed inside, fees on the chips bought, transportation of the players etc. The GoM had to deliberate on as to how to tax these different components within the overall casino activity. Further online gaming, horse racing and casino are three very different sectors, though all involve some form of betting and gambling, but the way they operate is diverse from each other. It was felt that the GoM needed to find some uniformity in the rates and valuation of each activity in these sectors.

2.3 The GoM recommendations with regard to GST on Casinos, Race Courses and Online Gaming are reproduced below:

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.*

Rationale:

(i) The general view in the GoM was that all these activities, because of their nature and negative externalities, should be taxed at the highest rate of tax. These activities involve elements of financial risk, are addictive in nature and have an adverse impact on the society at large and the youth in particular. There was broad consensus that imposition of GST on these activities should be uniform in terms of rate and valuation. In this background, it was unanimously decided that the activities of casinos, race courses, and online gaming should be subjected to GST at the highest rate of 28%.

(ii) 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 distinction should not be relevant for GST. So long as there is betting for monetary winnings, the activities should be similarly taxed. 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.

(iii) As regards 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. Further, it had 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. Further as GST is 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.

(iv) On the question of taxing these activities on GGR/net value, the GoM observed that actionable claims in the form of lottery, betting and gambling have been consciously brought in the fold of GST. Only a single levy of GST is applied replacing a multitude of cascading 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. Many of these taxes were levied on full face value of bets/chip sale value etc. In such a context, by removing the prize pay-outs 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.

(v) Unlike other countries, India taxes actionable claims as a supply of goods and therefore, the international practice with regard to the levy of GST/VAT on these actionable claims has little relevance for India. As observed by the Hon'ble Supreme Court in Skill Lotto case, 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.

2.4 In the 47th meeting of the Council, Hon'ble Minister from Goa raised certain reservations about the recommendations in the said report of the GoM stating that if the Council accepted the GoM report, it would lead to closure of the industry and the activities

would move into the grey markets. He also put forth the suggestion that the pre-GST model and international best practices on taxation of casinos need to be considered. He further stated that the stakeholders were not requesting a reduction in the rate of tax from 28% to 18% but a different valuation mechanism to tax the casinos. He emphasised that casinos, horse racing and online gaming should not be clubbed together as each activity is completely different. He requested that the issues may be reconsidered and that stakeholders may be consulted.

2.5 On the suggestion of few other states to relook the report on the whole, it was decided by the GST Council that the GoM may relook into all the issues in the light of submissions placed before it by eliciting information from Goa, Tamilnadu and Telangana for their respective areas.

II. Submissions of the Stakeholders before GoM:

3. Following the decision of the GST Council for GoM to re-examine the issues, the GoM conducted stakeholder consultations via video-conferencing on 12th July, 2022 with the Casino Association of Goa, Turf Authorities of India, E-Gaming Federation (EGF) and Federation of Indian Fantasy Sports (FIFS). The industry presentations and written representations along with legal opinions of Shri Deepak Mishra (Ex. Chief Justice of India), Shri Anil Kumar (Judge (retd.) Allahabad High Court), Shri Harish Salve and M/s Lakshmikumaran & Sridharan are enclosed as Annexure II to VII. GoM members also conducted field visits to Bangalore Turf Club and casinos at Goa on 23rd and 24th July, 2022 and met with the trade and industry associations of all three sectors during the field visits.

3.1 The main thrust of the views expressed by the industry has been summarised below:

3.2 Online Gaming:

(i) Online games are games of skill. Therefore, it does not come under the category of 'betting and gambling'.

(ii) Although the amount at stake in online games is an actionable claim, online games do not come under the category of actionable claims taxable under GST, as they do not fall under the category of 'betting and gambling'.

(iii) The words betting and gambling in the phrase 'betting and gambling' should be read together in view of the recent Hon'ble High Court of Madras decision in Junglee Games,

according to which GST is applicable only on such betting which is on gambling activities or on games of chance.

(iv) Only platform fee is received as consideration for the services provided by the online game operators. Hence, only this amount can be taxed under GST.

(v) It is ultra-vires the law to tax those goods/services for which the power to tax has not been given by the Parliament.

(vi) The representatives of online gaming industry emphasized that the recommendation of 28% GST on face value would increase tax by 1000%. Moreover, multiple High Courts such as Bombay High Court in Gurdeep Singh Sacchar (Dream 11) case and Punjab and Haryana High Court in Varun Gumber case have held that the activities in online gaming fall in the category of games of skill.

(vii) The Central government is in the process of formulating laws and regulations for online gaming industry and an Inter-Ministerial Task Force (IMTF) has already been constituted. It was requested that status quo be maintained till the report of that task force is brought out.

3.3 Race Courses:

(i) Horse racing and bets placed thereon are not lottery and therefore the only question is, whether horse racing is 'betting and gambling'.

(ii) The Hon'ble Supreme Court in RMD Chamarbaugwala and Dr. Lakshmanan case has concluded that games of skill do not amount to gambling and that if substantial skill is involved despite an element of chance, it would be a game of skill and would not amount to gambling. The CGST Act 2017 does not define "betting and gambling" or a game of skill or chance. Therefore, the Supreme Court rulings on the same are valid.

(iii) The words betting and gambling appearing in Entry 34 of State List of the Constitution, are required to be read together and not separately. Only such betting which takes place on gambling activities is taxable. In other words, betting on horse racing, which is a game of skill, is actionable claim but not actionable claim in the form of 'betting and gambling' and is thus not taxable under GST.

3.4 Casinos:

(i) The activities in casinos are admittedly of the nature of betting and gambling and thus taxable.

(ii) The activities in a casino are complicated and unlike horse racing and lottery, where transactions are ticket-based, in casinos, transactions are player-based and take place on the table mostly. Bets are not placed at the time of purchase of tokens/chips but at the time when these chips are used/ placed for bet on tables. After the purchase of chips, bets can be placed for entire or lesser number of chips.

(iii) Instead of calculating the tax player-wise, it should be calculated table-wise and that actionable claim in case of casinos is that amount which corresponds to the value of the chips that remain with the table at the end of the day.

(iv) International practice is to tax casinos on the Gross Gaming Revenue (GGR), that is, the difference between the amounts of money players wager minus the amount that they win.

(v) They pay 50 to 55% of their earnings as revenue to the Government. COVID has impacted the casino industry badly and they are facing competition from online gambling as well.

(vi) Rule 31A(3) should not be applicable on Casinos and a separate rule needs to be introduced for the method of valuation of Casinos.

III. Deliberations of the GoM:

4. The deliberations of the GoM mainly revolved around two questions, namely, -

(i) Whether or not the activities in race courses and online gaming amount to betting and gambling in the light of various High Court and Supreme Court judgments.

(ii) How should the supplies of casinos, race courses and online gaming be valued; on the full-face value of bets placed or on GGR in case of casinos, the totalisator fee in race courses and platform fee/GGR in the case of online gaming.

5. The GoM deliberated upon these issues in detail in the third meeting of the GoM held on 12th July, 2022 via video conference, in the fourth meeting held on 5th September, 2022 at New Delhi and in the fifth meeting of the GoM held on 22nd November, 2022 via video conference.

6. During the discussions, a view was expressed that the activities under consideration are diverse and different in nature and to formulate a simple uniform formula to tax them is a

challenging task. In this context, it was stated that while casinos and horse racing are activities which are conducted physically, online gaming is completely on the digital platform and clubbing these activities into one category and prescribing a uniform formula for their valuation may not be desirable. It was also viewed that the 'contribution towards prize pool' may be treated as supply not liable to levy of GST. However, there were also contrary views presented expressing the view that whether the activity happens physically or on the digital platform, the supply remains the same, that is, the supply of actionable claim in the form of betting and gambling and that the doctrine of e*jusdem generis* needs to be applied in this context. There cannot be any ambiguity that the intent of the GST laws is to levy tax on all kinds of actionable claims that fall under the class of "lottery, betting and gambling".

7. The GoM noted that betting and gambling have not been defined in the GST laws and that there are contrasting judgments by various courts. The GoM observed that the Hon'ble Supreme Court in Dr K R Lakshmanan case held that horse racing is a game of skill. It was also observed by the Bombay High Court in Gurdeep Singh Sacchar (Dream 11) case and the Punjab and Haryana High Court in Varun Gumber case that the activities in online gaming are in the category of games of skill. The GoM, however, observed that these judgments cited by the industry have been passed in the context of statutes of various States for regulating/prohibiting gaming activities and are not in the context of taxation, per se.

8. The Convenor requested the members of GoM to send their views in writing which could be presented to the Council. It was also decided to seek legal opinion.

9. Some observations made in the following court judgments were also brought to the notice of the GoM:

(i) In case of **State Of Andhra Pradesh vs K. Satyanarayana & Ors 1968** AIR 825, Hon'ble Supreme Court has, *inter alia*, observed ……*"Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of rummy or any other game played for stakes, the offence may be brought home. ..."*

(ii) In the case **M J Sivani and Ors Vs State of Karnataka & ORs, 1995**, the Hon'ble Supreme Court has, *inter alia,* observed, "*Gaming, therefore, is an inclusive definition which includes a game of chance and skill combined or a pretended game of chance or of chance and skill combined.... Gaming is to play any game whether of skill or*

chance for money or money's worth and the act is not less gaming because the game played is not in itself unlawful and whether it involved or did not involve skill...

"To game", therefore, is to play any game, whether of skill or chance, for money or money's worth."

(iii) Hon'ble Supreme Court in the case of **State of Karnataka & ORs, Vs. State of Meghalaya & Ors 2022**, has observed, *"The expression 'betting and gambling' is relatable to an activity which is in the nature of 'betting and gambling'. Thus, all kinds and types of 'betting and gambling' fall within the subject of Entry 34 of List II. The expression 'betting and gambling' is thus a genus it includes several types or species of activities such as horse racing, wheeling and other local variations/forms of 'betting and gambling' activity."*

(iv) The Hon'ble Supreme Court vide order dated 06.03.2020 has stayed the Bombay High Court judgment the case of the State of Maharashtra vs. Gurdeep Singh Sachar SLP (CRIMINAL) 42282/2019 (Dream 11 case) wherein it was held that Dream 11 is a game of skill.

10. During the discussion in meetings, the following broad positions emerged:

(1) While there was like-mindedness amongst some members of the GoM that activities of casinos, horse racing and online gaming constitute betting and gambling and are taxable as supply of actionable claims in the form of betting and gambling, Goa expressed the view that the 'contribution towards prize pool' may be treated as supply not liable to levy of GST. Some of the GoM members also held the view that the contribution made by the players of online game towards the prize pool constitutes an Actionable Claim other than lottery, betting and gambling as the game is considered to be a game of skill and not game of chance. Thus, the said amount is explicitly covered at Para 6 of the Schedule III of CGST Act, 2017.

(2) Barring Goa, there was broad agreement on the rate of 28% to be applicable to these taxable activities. Goa has stated that "platform fee/service charge" charged for services provided by the platform company may be taxed at existing rate of 18%.

(3) There were strong differences of opinion on whether actionable claims of casinos, horse racing and online gaming should be taxed on full bet value or on GGR/platform fees. Divergent views and several points and counter points in favour and against

taxing the supplies on GGR, the different mechanisms of arriving at GGR, difficulties in monitoring the compliance etc. were expressed by the members.

11. The possibility of seeking legal opinion was also explored by GoM. However, the same was not found feasible as it was seen as beyond the scope of Terms of Reference of GoM [**Annexure VIII**].

12. The views expressed by the members during the meetings and also submitted in writing (enclosed as Annexures IX to XV) are summarized as below:

A. Online Gaming:

Gujarat has contended that online gaming is very different from other three forms i.e., lottery, casino and horse racing as the latter three are organized in physical form. However, in Online gaming both the supplier and recipient operate on virtual platform. Further the other three forms i.e., lottery, casino and horse racing may use partially manual records and cash transactions leaving scope for leakages, however, for online gaming, there are only online transactions and therefore, 100% transactions are recorded. Therefore, the point of similarity should not be used to put all these 4 categories into one basket. As far as rate of tax is concerned, Gujarat agreed that it could be 28%. Further that if full value is considered in case of online gaming, then the operators might move outside India and may supply such games from other countries like Singapore, Hong Kong, Maldives etc. In such circumstances, the country will not have any control on these online gaming activities. **Therefore, Gujarat suggested that we should consider only service charge (platform fee) for taxation purpose.**

Uttar Pradesh made the submission that online gaming has elements of both game of skill and game of chance. It is difficult to decide which of these two elements are in excess.

- As per the order given by the Hon'ble Gujarat High Court in the suit of Yashpalsinh Rajendrasinh ... vs State Of Gujarat (SPECIAL CRIMINAL APPLICATION NO. 767 of 2020) on 22 September, 2020, betting on the performance of a player is a Game of Chance.
- In M.J. Sivani And Ors. vs State Of Karnataka And Ors (Appeal (civil) 4564 of 1995) on 17 April, 1995, it was held by the Hon'ble Supreme Court that it is not necessary to decide in terms of mathematical precision the relative proportion of chance or skill when deciding whether a game is a game of mere skill.

Uttar Pradesh also put forth the argument that although there may be elements of skill in tasks such as selection of players etc., but in a real game, the performance of the selected player is a future event over which the participant who is placing the bet has no control and such a participant has equal chances for both gain and loss. So, in this way there is a wager/betting element in these games. Therefore, these games should be considered as a game of chance and the amount related to them is taxable due to being an actionable claim. The adverse effect on the youth in particular was highlighted as a grave issue of concern. In online games the activities such as collection of pool money, point allocation to the players, gradation of the players' points so allocated, deciding the winner, distribution of prize money among the players are solely controlled by the game operator. There is no mechanism that can be devised by States for verification of such activities. Hence, in interest of revenue, tax on total pool money (which is aggregate of face value of bets placed) is the only source available for fixing as basis of taxation. Under section 15(5) of the CGST Act, 2017, the Government has the power to determine the value of supply after the recommendations of the Council, with the overriding clause (Non-obstante clause). Therefore, in **the cases of Online Gaming, there is no legal impediment in levying pool money as the value of supply**. The power to levy tax on actionable claims like lottery, betting and gambling has been given by the Parliament to the States and the Centre.

West Bengal reiterated its original stand as in the earlier Report submitted by GoM and reaffirmed that all these activities whether online gaming or horse racing or casinos should be taxed at 28% on full value of bets placed.

Tamil Nadu opined that if a clear-cut view is taken that all three- casinos, horse-racing and online gaming are actionable claims of betting and gambling as games of chance, the recommendations of the GoM placed before the GST Council in the 47th Council meeting held on 28th & 29th June, 2022 are acceptable in toto. However, in case a view is taken that horse racing and online gaming are games of skill and not actionable claims of betting and gambling, taxing the Gross Gaming Revenue (GGR) at 28% should be adopted and mechanism for determining the taxable value may be as follows:

(i) There shall be a mechanism to segregate and split at inception, the receipts amount directly into 'operator account' and 'escrow account'. The online gaming company shall divide the receipts into the said two accounts. The 'operator account' shall hold

the purveyor's portion of the money and the 'escrow account' shall hold the prize money for eventual payout.

(ii) All winnings shall be paid out of escrow account and need not be subjected to GST. However, all such payments will be subject to direct tax including TDS applicable at 30%.

Telangana stated that the question of whether the online games are 'games of skill' or 'games of chance' is crucial. If an activity can be classified as betting and gambling then the earlier recommendations made by this GoM which were placed before the GST Council in its 47th meeting are acceptable in toto on the said activity. However, in case the said activity does not fit into betting and gambling, tax may be levied at highest rate and value may be arrived at by following the existing provisions of the GST Act.

Goa stated that as per the submissions of the trade and industry, online skill gaming platforms collect amount from players which is split as "platform fee/service charge" and "contribution towards prize pool" and bifurcation of the amount collected is communicated to all the players through the 'Terms & Conditions' available on the platform's website. The "platform fee/service charge" charged for services provided by the platform company are taxed at 18%, whereas the amount collected as "contribution towards prize pool" is treated as supply which is not liable for levy of GST. The contribution made by the players of online game towards the prize pool constitutes as actionable claim other than lottery, betting and gambling as they are considered to be game of skill and not a game of chance. The said amount is explicitly covered at para 6 of Schedule III of CGST Act, 2017 and therefore, is not leviable to GST. Therefore, the "platform fee/service charge" collected by online skill gaming platform may be continued to be taxed at existing rate or as may be decided by the GST Council and amount collected as "contribution towards prize pool" may be treated as supply not liable for levy of GST.

Maharashtra conveyed that their views that were expressed during the GoM meeting held on 22.11.2022 may be taken on record. Maharashtra expressed the view that actionable claims of online gaming are fully taxable under present provisions of GST Acts and are covered under Entry 6 of Schedule III. Judgments cited by industry emanate from regulatory aspect under prevention of Gambling Acts & various Police Acts and no specific judgment on taxability aspect has been cited. There should be no differentiation on basis of game of skill and game of chance for the purposes of taxation. Accordingly, Rule 31A (3) of CGST Rules,

2017 may be amended to reflect this position. If necessary, a specific mention may be incorporated in Schedule III Entry 6, for online gaming and consequent inclusions may be made to Rule 31A (3) of CGST Rules, 2017. Further, as Government of India has formed an inter-ministerial group to study the regulation on online gaming industry, the fear expressed by the industry that certain activities will shift to grey market and outside the country can be taken care of by suitable regulation. Taxation provisions on the lines of Online Information Database Access and Retrieval (OIDAR) services may be considered. Suitable abatement may be provided for the purposes of determination of taxable value of supply of actionable claim.

Meghalaya stated that the interactions made with the industry representatives from race courses and online gaming highlighted that both horse racing and online gaming are games of skill and not games of chance and that it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e. actionable claims can be taxed under GST, only if they pertain to lottery, betting and gambling, duly substantiated and supported by various court rulings, which have held that games where there is preponderance of skill do not amount to gambling and that the betting and gambling have to be read together, i.e. tax can be levied only on betting on the game of chance and not on the game of skill. The sum of money retained by the Online Gaming Operator or the Racing Club is not part of the actionable claim, hence can be taxed at the rate recommended by the GST Council as supply of services. The amount apart from the retained money as mentioned above, is the amount of actionable claim and can be taxed only if it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e. actionable claims can be taxed under GST only if they pertain to lottery, betting, and gambling.

13. The GoM also noted that the Union Government had also set up an **Inter-Ministerial Task Force (IMTF)** for regulation of online gaming, with Ministry of Electronics and Information Technology (MeitY), as the Convener. However, the broad view in the GoM was that the IMTF has been set up for making recommendations on regulation of online gaming and therefore, the same has no bearing on taxation of online gaming.

B. Race Courses:

West Bengal has stated that the judgment of Hon'ble Supreme Court in K R Lakshmanan case for horse racing was in respect of Madras City Police Act, 1988 and

Madras Gaming Act, 1930 and not in respect of taxing statute. Therefore, argument that horse racing cannot be classified as betting and gambling on the grounds that they are games of skill is incorrect. Further, the following have been stated:

- Horse racing is covered within the expression 'betting and gambling' as per the judgment of the Hon'ble Supreme Court in State of Karnataka Vs. State of Meghalaya case 2022.
- Common Parlance Test is an established norm for deciding taxability of goods in any taxation statute and needs to be considered in this context.
- Doctrine of "Ejusdem Generis" meaning "of the same kind and nature" needs to be applied in this context. There cannot be any ambiguity that the intent of the GST laws is to levy tax on all kinds of actionable claims that fall under the class of lottery, betting and gambling.
- It is not only difficult but impossible to ascertain the accurate percentage of skill or percentage of chance that is involved in a particular game and therefore, it would be absolutely inappropriate to classify all kinds of such activities as game of skill. The Hon'ble Supreme Court judgments in M.J. Sivani Vs State of Karnataka 1995 and in State of Andhra Pradesh Vs K Satyanarayana 1968 have been cited in support.

As regards the principle of valuation in respect of horse racing, West Bengal has expressed the view that deciding to tax actionable claims in the form of lottery, betting and gambling was a conscious decision of the GST Council. Further, Rule 31A of the GST rules has already been upheld by the Hon'ble Supreme Court in Skill Lotto Solutions Pvt. Ltd. Vs UOI 2020. The principle of valuation in Rule 31A of the GST rules covers not only lottery but also horse racing and betting and gambling.

Uttar Pradesh stated that in pre-GST regime horse races were taxable under different state taxation laws and multiple taxes were levied such as entry tax, service tax by Centre on license fee and tote commission, embedded excise duty and other taxes. Further, though for a player who is participating in horse racing it may be a game of skill but for a person who places a bet on the performance of former it is a game of chance. Cases of *Yashpalsinh Rajendrasinh & ors vs State Of Gujarat* (Special Criminal Application No. 767 of 2020) on 22 September, 2020 in Gujarat High Court and case of Public Prosecutor v. Veraj Lal Sheth, (AIR 1915 Mad 164) in Madras High Court have been cited in support of the above

statement. Moreover, the race course authorities do not conduct any test/examination to examine the skills of any person who places bets on horses and the entry to the race course does not need any special knowledge of any particular field related to horse racing, a common man having no knowledge or experience of horse racing can go to the race course and may place bet based on any feature/quality of the horse such as appearance, coat colour, hairs etc. Therefore, horse racing is a game of skill but betting on result of horse racing is a game of chance.

Tamil Nadu opined that if a clear-cut view is taken that all three- casinos, horse-racing and online gaming are actionable claims of betting and gambling as games of chance, the recommendations of the GoM placed before the GST Council in the 47th Council meeting held on 28th & 29th June, 2022 are acceptable in toto. However, in case a view is taken that horse racing and online gaming is a game of skill and not actionable claim of betting and gambling, taxing the Gross Gaming Revenue (GGR) at 28% should be adopted and mechanism for determining the taxable value may be as follows:

(i) There shall be a mechanism to segregate and split at inception, the receipts amount directly into 'operator account' and 'escrow account'. The race-club shall divide the receipts into the said two accounts. The 'operator account' shall hold the purveyor's portion of the money and the 'escrow account' shall hold the prize money for eventual payout.

(ii) All winnings shall be paid out of escrow account and need not be subjected to GST. However, all such payments will be subject to direct tax including TDS applicable at 30%.

Telangana stated that the question of whether horse racing are 'games of skill' or 'games of chance' are crucial. If an activity can be classified as betting and gambling then the earlier recommendations made by this GoM which were placed before the GST Council in its 47th meeting are acceptable in toto on the said activity. However, in case the said activity does not fit into betting and gambling, tax may be levied at highest rate and value may be arrived by following the existing provisions of the GST Act.

Goa stated that services of betting on horse racing were not available in the state of Goa and therefore, there were no comments to offer on the issue.

Gujarat mentioned that as the activity of horse racing does not take place in Gujarat, there are no specific comments to offer and the final decision of GoM is acceptable.

Maharashtra expressed the views that actionable claims of horse racing are fully taxable under present provisions of GST acts and are covered under Entry 6 of Schedule III. Judgments cited by industry emanate from regulatory aspect under prevention of gambling acts & various police acts and no specific judgement on taxability aspect has been cited. There should be no differentiation on basis of game of skill and game of chance for the purposes of taxation. Accordingly, Rule 31A (3) of CGST Rules, 2017 may be amended to reflect this position. Suitable abatement may be provided for the purposes of determination of taxable value of supply of actionable claim.

Meghalaya stated that the interactions made with the industry representatives from race courses and online gaming highlighted that both horse racing and online gaming are games of skill and not games of chance and that it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e. actionable claims can be taxed under GST, only if they pertain to lottery, betting and gambling, duly substantiated and supported by various court rulings, which have held that games where there is preponderance of skill do not amount to gambling and that the betting and gambling have to be read together, i.e. tax can be levied only on betting on the game of chance and not on the game of skill. The sum of money retained by the Online Gaming Operator or the Racing Club is not part of the actionable claim, hence can be taxed at the rate recommended by the GST Council as supply of services. The amount apart from the retained money as mentioned above, is the amount of actionable claim and can be taxed only if it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e. actionable claims can be taxed under GST only if they pertain to lottery, betting, and gambling.

C. Casinos:

The GoM observed that as acknowledged by the industry itself, there is no contest to the fact that there is supply of actionable claims which is taxable as per Entry 6 of Schedule III to the CGST Act, 2017. However, the issue is whether the tax should be levied on full face value of chips at the time of sale of chips to individual players or whether the tax should be levied on GGR.

Goa stated that it is the major State affected with other States being Sikkim and Meghalaya. The practice all over the world is to tax the casinos on gross gaming revenue and that the best international practices in GST should be adopted. If we tax full value of betting, the tax will be more than what the casinos earn. This is impractical and will close down the businesses and if the businesses close down the Government will not get any revenue and will also push the business into the grey market. It is the gross gaming revenue (GGR) of the casinos which needs to be taxed. The cardinal principle of GST has been that it has to align to pre-GST levels. In pre-GST, entertainment tax @15% and tax on GGR for sale of chips was levied. Goa is a tourism dependent state and based on a conservative estimate, almost 60% of inbound flights to Goa bring tourists (both domestic and international) who come to Goa just for the casinos. Further, an unfavourable decision for the casinos would also adversely impact the entertainment industry in Goa. Further, Goa also stated that there is no objection to levy of tax on entry fee in Casinos as suggested by GoM earlier. However, the taxable value of supply of actionable claims may be based on the GGR of the casino as it is a certain and efficient measure of levy and has a cogent nexus with the supply of actionable claims. Insertion of a separate rule for casinos to levy GST on GGR may be considered.

Meghalaya proposed that highest rate of tax i.e., 28% should be levied on GGR, following the table-wise model of revenue and not stake money wagered in casino. Further, the chips won in subsequent rounds should not be further subjected to tax as recommended by GoM in its first report. As proposed in the first report of GoM, GST @ 28% should be levied on entry fee, which compulsorily includes price of one or more supplies bundled together viz. food, non-alcoholic beverages etc. However, optional supplies made independently of the entry fee shall be taxed at the rates as applicable on such supplied. Liquor served inside casino should be taxed as per the VAT rate of respective State Government.

West Bengal stated that deciding to tax all actionable claims in the form of lottery, betting and gambling was a conscious decision of the GST Council. The Rule 31A of CGST Rules, 2017 governing the principle of valuation of such actionable claims has been upheld by the Hon'ble Supreme Court in Skill Lotto case.

As regards the request of trade to follow international practice, wherein tax is levied on platform fees or GGR, the observations of the Hon'ble Supreme Court in Skill Lotto Solutions Pvt. Ltd. Vs UOI 2020 case is relevant. The apex court observed that *the taxing*

policy and the taxing statute of various countries are different which are in accordance with taxing regime suitable and applicable in different countries. Therefore, it needs to be noted that every country is different and has different priorities and there is no reason to adopt international practice selectively. Further, doctrine of *ejusdem generis* does not permit to extend any separate treatment to any of these activities than what has been extended in case of lottery. It has also been stated that the GST Council has concluded after several rounds of discussion that there cannot be two rates for one category of goods. Therefore, when there is a settled stand of the GST Council, there cannot be any reason to deviate from it and uniform valuation principles and rate for all such activities considered as "actionable claims" must be adopted. With regard to the apprehensions that the industry will shut down completely, it was stated that similar apprehensions were raised when it was decided by the GST Council to tax lotteries at 28% but the revenues from lottery business have been increasing even after such a decision.

Gujarat mentioned that as the activity of casino does not take place in Gujarat, there are no specific comments to offer and the final decision of GoM is acceptable.

Tamil Nadu reiterated that if a clear-cut view is taken that all three- casinos, horse-racing and online gaming are actionable claims of betting and gambling as games of chance, the recommendations of the GoM placed before the GST Council in the 47th Council meeting held on 28th & 29th June, 2022 are acceptable in toto. No specific view was provided on Casinos.

Telangana stated that if an activity can be classified as betting and gambling then the earlier recommendations made by this GoM which were placed before the GST Council in its 47th meeting are acceptable in toto on the said activity. However, in case the said activity does not fit into betting and gambling, tax may be levied at highest rate and value may be arrived by following the existing provisions of the GST Act.

Uttar Pradesh stated that taxation on basis of GGR is neither practical nor legally feasible. So, the previous recommendation of GoM to impose one-time tax at the rate of 28% at full value is a practical solution. If only GGR is taxed, then the revenue receipt will be very less. In GGR based tax it is possible that even after several cycle of supplies no revenue for Government may be generated. Sikkim, which also has operational casinos has also opposed the taxation on GGR basis and have stated that *in GGR system, the tax payable becomes nil when the casino owner loses in total to the players. In this aspect the GGR system is not in*

parlance with the basic principle of levy. It does not generate tax despite of abundant supply and consumption of service in such case. If a player after playing several games returns with the same amount of chips as purchased by him, it will be impossible to trace that whether or not he has played a game on any table. Thus, in such a case there will be a supply but no tax will accrue to the Government.

In the present legal framework under GST, every time a bet is placed on the table there will be a taxable supply. It is possible that a single payment of money may generate several cycles of game and accordingly the tax liability. However, the GoM had already agreed in its first report that it would be difficult to monitor every bet on each and every table. Therefore, considering the plight of the casino industry the initial recommendation that the chips won in subsequent rounds should not be further subjected to tax may be agreed to.

Maharashtra expressed that actionable claims of casinos are fully taxable under present provisions of GST acts and are covered under Entry 6 of Schedule III. Judgments cited by industry emanate from regulatory aspect under prevention of gambling acts & various police acts and no specific judgment on taxability aspect has been cited. There should be no differentiation on basis of game of skill and game of chance for the purposes of taxation. Accordingly, Rule 31A (3) of CGST Rules, 2017 may be amended to reflect this position. Suitable abetment may be provided for the purposes of determination of taxable value of supply of actionable claim.

Summary:

14. The views of GoM have been tabulated in brief as under:

<table>
<tr><th>Sl. No.</th><th>State</th><th>Casino</th><th>Horse Racing</th><th>Online Gaming</th></tr>
<tr><td rowspan="2">1.</td><td rowspan="2">Meghalaya</td><td colspan="3"></td></tr>
<tr><td>Rate of tax – 28%
Value – on GGR</td><td colspan="2">The sum of money retained by the Online Gaming Operator or the Racing Club is not part of the actionable claim, hence can be taxed at the rate recommended by the GST Council as supply of services. The amount apart from the retained money as mentioned above, is the amount of actionable claim and can be taxed only if it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e. actionable claims can be taxed under GST only if they pertain to lottery, betting, and gambling.</td></tr>
<tr><td>2.</td><td>West Bengal</td><td colspan="3">Original stand of the GoM in first report is reaffirmed.
Rate of tax – 28%
Value – On full face value of the bets placed.</td></tr>
</table>

Sl. No.	State	Casino	Horse Racing	Online Gaming
3.	Tamil Nadu	• If view is taken that all three: casinos, horse-racing and online gaming are actionable claims of betting and gambling as games of chance, the recommendations of the GoM placed before the GST Council in the 47th Council meeting held on 28th & 29th June, 2022 are acceptable in toto. • In case a view is taken that **horse-racing** and **online gaming** are games of skill and not actionable claims of betting and gambling, taxing the Gross Gaming Revenue (GGR) at 28% should be adopted with mechanism of 'escrow account' and 'operator account' to distinguish between contribution to prize money and platform fees/service charge.		
4.	Telangana	• If an activity can be classified as betting and gambling then the earlier recommendations made by this GoM which were placed before the GST Council in its 47th meeting are acceptable in toto on the said activity. • If an activity cannot be classified as betting and gambling, then tax at 28% on value as per existing provisions in the GST laws.		
5.	Goa	Rate of tax – 28% Value – On the GGR of the casino.	No comments to offer	Rate of tax – 18% or as per decision of GST Council Value – On platform fee/service charge Contribution to prize pool may be treated as supply not liable for GST levy.
6.	Uttar Pradesh	As there are no new judgments either by Supreme Court or any High court so there is no substantial change either in legal position or in circumstances original stand of the GoM in first report is reaffirmed. Rate of tax – 28% Value – On full face value of the bets placed.		
7.	Gujarat	No comments. View of GoM is acceptable.	No comments. View of GoM is acceptable.	Online gaming may be treated differently. Rate of tax – 28% Value - On the platform fee/GGR
8.	Maharashtra	• Actionable claims of horse racing, casino and online gaming are fully taxable under present provisions of GST act. • There should be no differentiation on basis of game of skill and game of chance for the purposes of taxation. Rule 31A (3) of CGST Rules 2017 may be amended to reflect this position. • Suitable abatement be provided for the purposes of determination of taxable value of supply of actionable claim.		
		-	-	If necessary, a specific mention may be incorporated in Entry 6, Schedule III of CGST Act, 2017 for online gaming specifically and consequent changes made to Rule 31A (3) of CGST

Sl. No.	State	Casino	Horse Racing	Online Gaming
				Rules. Taxation provisions on the lines of OIDAR services may be considered

IV. Recommendations:

15. The GoM, after wide stakeholder consultations and taking into account views of the GoM Members, makes the following recommendations: -

Online Gaming:

(i) As regards taxability of activities in online gaming, GoM could not reach a consensus. Goa has expressed the view that the 'contribution towards prize pool' may be treated as supply not liable to levy of GST. West Bengal and Uttar Pradesh have expressed the view that as recommended by the GoM in the report submitted to the Council in its 47th meeting, the activities of online gaming may be taxed as supply of actionable claims in the form of betting and gambling irrespective of whether the online games involve betting on a game of skill or a game of chance. Tamil Nadu has expressed that in case a view is taken that horse racing and online gaming are games of skill and not actionable claims of betting and gambling, taxing the Gross Gaming Revenue (GGR) at 28% should be adopted and mechanism for determining the taxable value was also proposed.

(ii) There was broad agreement that the said supplies may be taxed at the highest rate of 28%. However, no consensus could be reached as Goa has suggested that platform fees/service charge may be taxed at existing rate of 18%.

(iii) As regards valuation, the GoM could not reach a consensus. While Uttar Pradesh and West Bengal were of the view that the said activity may be taxed on the full value of bets placed on online games, Gujarat and Goa expressed the view that the same may be taxed on the platform fees. Maharashtra has proposed that suitable abatement be provided for the purposes of determination of taxable value of supply of actionable claim.

Race Courses:

(i) There was no broad consensus that the activities of betting on horse racing in race courses may be taxed as supply of actionable claims in the form of betting and gambling, though there was an understanding amongst most members that it may be taxed at the highest rate of 28%.

(ii) As regards valuation, some members held that the value of such supplies shall be 100% of the face value of the bets placed or the amount paid into the totalisator. Tamil Nadu has expressed the view that in case it is held that horse racing and online gaming are games of skill and not actionable claims of betting and gambling, taxing the Gross Gaming Revenue (GGR) at 28% should be adopted and suggested a mechanism for determining the taxable value.

Casinos:

(i) There was consensus that activities in casinos are in the nature of betting and gambling and hence, it is a taxable supply of actionable claims.

(ii) There was also no disagreement on the rate of tax at 28%.

(iii) The GoM could not reach a consensus on valuation for purposes of taxing the activity. While Uttar Pradesh and West Bengal were of the view that the said activity may be taxed on full face value of chips at the time of sale of chips to individual players and 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. Goa and Meghalaya expressed the view that the same may be taxed on the Gross Gaming Revenue. Maharashtra has, while agreeing on the rate at 28% on the full value of bets but suggested suitable abatement be provided for the purposes of determination of taxable value of supply of actionable claim.

(iv) As regards, GST on 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.

V. Conclusion:

16. In pursuance of the directions given by GST Council in its 47th meeting, wide consultations with the stakeholders along with study visits were undertaken by the GoM. Considering the complexity of the issues involved in these three sectors, which are not comparable, the views of the members were divergent in nature and GoM could not reach the consensus. The views of each member State are included in the report individually and giving due respect to all the valuable views and insights shared by all members, the report has been finalised with a request made by the members to the Hon'ble Convener to express his specific views/opinion on the subject-matter.

17. Upon meeting with the stakeholders and delving deeper into the issues raised, there appears to be a difference made between the nature of the games on which GST is sought to be levied i.e., games of chance (those games that are solely based on luck and chance) and games of skill (those games that are primarily and substantially based on skill). The stakeholders have impressed upon us that the Hon'ble Supreme Court, in several judgements has recognized that games that are categorized as games of skill ought not to be made susceptible to taxation in a similar way as games of chance are. The following are some of the judgements that have held so:-

(a) *State of Bombay versus R.M.D. Chamarbaugwala and Others – AIR 1957 SC 699,* where the Supreme Court has recognized that activities that possessed even a "*scintilla of skill*" that was required for winning, could not be recognized as a game of chance and therefore, could not be a gambling activity.

(b) *R.M.D. Chamarbaugwala and Anr. versus Union of India – 1957 1 SCR 930*, where the Supreme Court has recognized that "*competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories.*"

18. This difference between activities that are categorized as games of skill versus those that are so categorized as games of chance is relevant, inasmuch as the activity of horse racing and the bets placed on such races have been recognized by the Hon'ble Supreme Court, in the case of *Dr. K.R. Lakshmanan versus State of Tamil Nadu and Anr. – 1996 (2) SCC 226,* as being a game of skill, in the breeding, selection and training of the race

horse, the discerning in the selection and skill of the jockey as also the skill and discretion involved in the selection of a potential winning horse and the placing of the bet.

19. The difference between games of skill and chance is significant in light of the provisions of the CGST Act, 2017, wherein while *"actionable claims"* have been stated as being outside the purview of taxation, an exception has been created in the cases of *"lottery, betting and gambling"*. The Hon'ble Supreme Court, in the above cited cases, has found activities that are primarily dependent on skill for success, as not being gambling/betting activities, which would include horse racing as well.

20. The sense/perception which emerges out of such wide interactions is that both horse racing and online gaming are games of skill and not games of chance and that it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e. actionable claims can be taxed under GST, only if they pertain to lottery, betting and gambling, duly substantiated and supported by various court rulings, which have held that games where there is preponderance of skill do not amount to gambling and that the betting and gambling have to be read together, i.e. tax can be levied only on betting on the game of chance and not on the game of skill.

21. Under Section 9 of the CGST/ SGST Acts, the Council is empowered to recommend the rates of tax on the taxable goods and services and prescribe the manner (read 'valuation') for levy of GST.

22. It is understood that during horse racing, consumers place bets or wagers. Race courses act as the service provider for the wagering transaction. The wagers are placed through a totalisator, which pools the wagers. The commission for offering the services are retained and the balance amount is kept aside as a pool for prize winning. Similar is the case with online gaming, where the gaming operator provides the online platform for gaming and part of the pool money is retained by the operator as platform fee/facilitation fee/membership fee/access fee and the remaining balance becomes the stake money.

23. The sum of money retained by the Online Gaming Operator or the Racing Club is not part of the actionable claim, hence can be taxed at the rate recommended by the GST Council as supply of services.

24. The amount apart from the retained money as mentioned above, is the amount of actionable claim and can be taxed only if it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e. actionable claims can be taxed under GST only if they pertain to lottery, betting, and gambling.

25. In conclusion, the Hon'ble Convener of the GoM opines that the levy of GST may be only on the GGR in case of Casinos and part of transaction what is relatable to service, i.e. the commission/platform fee/Gross Gaming Revenue in case of Race Courses and Online Gaming coupled with a desirable special mechanism to carve out Escrow Account wherein the prize money is pooled in, for the payouts to the winners, segregated from the amount collected/retained toward commission/platform fee, for the purpose of easy tax administration and considering the cascading effect of taxation not only on the main sectors of Casinos, Race courses and Online gaming, but also on the ancillary sectors and industries like tourism, transport, entertainment, sports etc. for its viability and long term growth prospects in the larger interest of our economy. However, since no consensus could be reached on whether the activities of online gaming, horse racing and casinos should be taxed at 28% on the full-face value of bets placed or on the GGR, the GoM recommends that GST Council may decide.

****

Confidential

Annexure-I

सत्यमेव जयते

Report of Group of Ministers (GoM) on Casinos, Race Courses & Online Gaming

May, 2022

Table of Contents

Page No.

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-authorised, 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)	(iiia)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 *ultravires* 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.

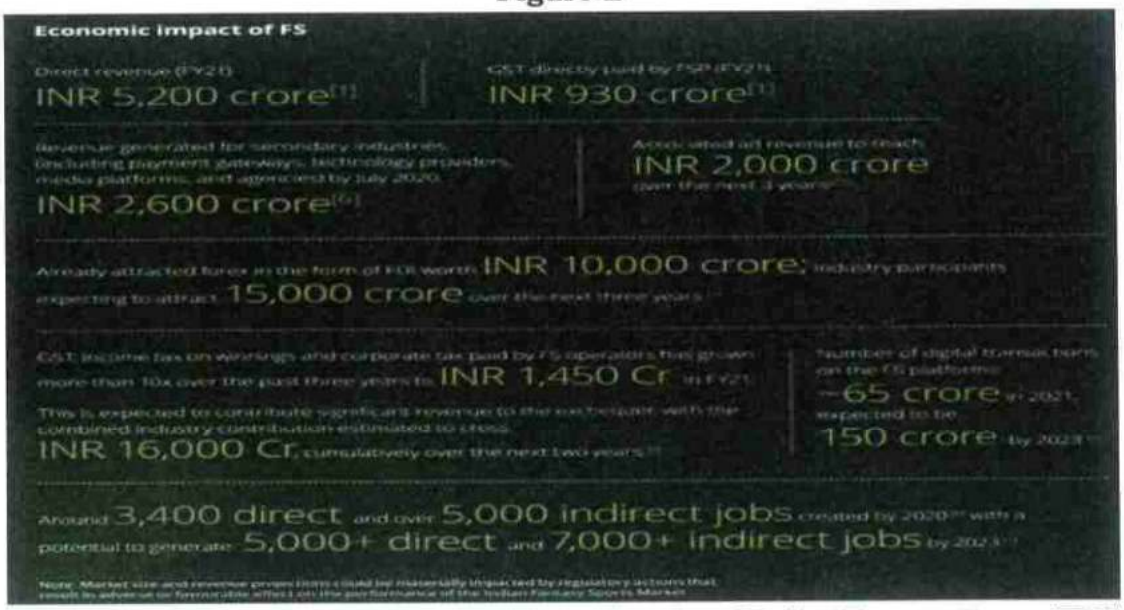
11.2.3 With the introduction of GST, a simple tax regime has been introduced, subsuming most of the taxes levied by the States. The rates of GST are prescribed on the recommendations of the GST Council.

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)

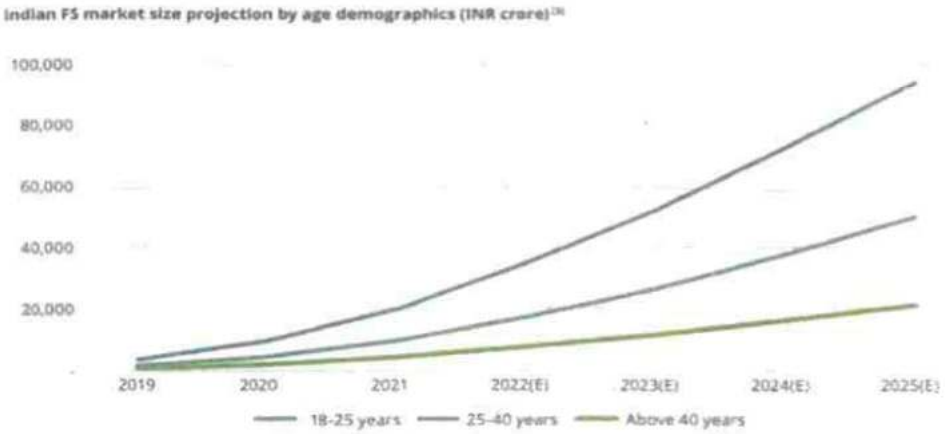
Figure 2



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.

***

Confidential

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 of an alternative means of valuation is recommended

d. To examine impact on other similarly placed services like lottery

Confidential

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 months for consideration of the GST Council.

(Dinesh Kapadia)
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.

Confidential

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.

GST ON GAMBLING & BETTING
CASINO

Pre- GST
Gaming Tax on Casinos was on GGR

- Casinos are in operation since 1995 in Goa and since 2009 in Sikkim.
- **Sikkim :** Gaming Fee was levied and collected @10% of the Gross Gaming Yield i.e. **GGR.**

"(e) Gross Gaming Yield" means the total amount of all bets or stakes made, and the price of all chances sold, less the value of all winnings and prizes due, in all the course of gaming during the period in question."

- **Goa : Entertainment Tax** @15% of the charges/income received by proprietor or person towards casino games/sale of chips i.e. **GGR**.
- Additionally Rs.1000 per person was collected as Entry Fee in both States of Sikkim & Goa.
- Assessment for the Gaming Fee, Entertainment Tax & Entry Fee have been completed till 30th June 2017 on the basis of GGR.

2

GST on Gambling & Betting

- Post GST, Casinos started paying taxes at an increased rate of 28% on the same method of valuation as was prescribed and applicable under pre-GST regime which was on GGR.

- **Goa :** For the FY 2016-17, from two of the offshore casinos of a listed Company, the **Govt. of Goa** has collected total Rs. 62 Cr towards Gaming Activity., of which RS. 38Cr was towards Entertainment Tax (15%) and Rs.24 Cr towards Entry Tkt. (@1000 per visitation).

- If we apply 28% GST on the same base (GGR) on which the Entertainment Tax was collected, the amount comes to Rs.63.5Cr. Therefore there was no loss of revenue to the Government on GST getting introduced. Further, Govt. of Goa increased the Annual License fee from Rs. 11Cr to Rs.30 Cr. Per off-shore Casino to off-set their 14% CGST.
- Hence the total tax incidence of taxes and fees paid by the Casinos is in excess of 45% on GGR.

3

Casino, Lottery & Horse racing

Particulars	Casino	Lottery	Horse Racing
Pre-GST-	Tax on GGR Goa- 15% Sikkim- 10%	Service Tax on face Value of every ticket sold	Betting Tax on face Value of every bet or amount pooled into totalisator.
Post-GST	Tax on GGR Goa- 28% Sikkim- 28%	Tax on face value of every ticket Sold Initially 28% & 12% rate, Now @28% uniform.	Tax @28%, Changed the method of valuation post GST from face value to retained commission.
Game Play	Continuous betting games against the Casino. Notionally high turnover due to continuous betting.	Event based hence taxed on the total bet value.	Event based hence taxed on the total bet value.
House Edge	Winning Odds are pre-fixed which is **cum-tax basis**, ranging between 1% to 3% of Bet Value.	Margin can be altered to absorb the tax incidence	Margin can be altered to absorb the tax incidence

4

Gaming Taxes Worldwide

Sr. No	Country	Basis of Gaming Tax	Tax Rate
1	Singapore	GGR	5% to15%
2	Macau (China)	GGR	35%, Additional 4% is collected by other welfare agencies.
3	United Kingdom	GGR	15% to 50%
4	Las-Vegas (USA)	GGR	3.5% to 6.75%
5	Sri Lanka	GGR	15%
6	Malaysia	GGR	25% is charged on the GGR and Service Tax @6% is charged additionally after reducing the betting tax. Effectively it is 29.5% on the GGR.

5

Sr.No	Country	Basis of Gaming Tax	Tax
7	Australia	GGR	0.88% to 41.25%, as different states have different rates. In addition 10% GST is charged.
8	Austria	GGR/Stakes	Land Based Casino : 30% of GGR. Lottery : 27.5% of Bet value
9	Nepal	NA	No other tax apart from License fee on Casinos
10	Malta	GGR	5%

Note : It can be seen form the above 10 prominent Casino gaming jurisdictions that taxes are levied on **Gross Gaming Revenue (GGR).**

6

25 GST Council Meeting & Introduction of Rule 31A(3) for horse racing

- The State of Maharashtra noticed dip in the tax collection and represented in 25th GST council meeting Held on 18th Jan 2018.

  - CCT Maharashtra Proposal : ***Clarification is sought on valuation of supply of betting in Horse Racing.***

  - CCT Maharashtra Justification : *Provision may be mis-used by the trade by deducting the prize money from the amount paid for betting and treating the remaining amount as the transaction value liable to be taxed under Section 15(1).*

  -Fitment committee decision : *Following provision may be inserted in GST rules under section 15 of Act, Notwithstanding anything contained in the provisions of this chapter, value of supply of Betting & Gambling shall be 100 % of the face value of the bet or the amount paid into the totalizator.*

- Rule 31A (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.";

- Rule 31A(3) should not be applicable on Casinos and a separate rule needs to be introduced for the method of valuation in Casino.

7

37th GST Council Meeting

- Chief Minister of Goa- Proposal : *Request for clarification of taxability and valuation of supply in casinos.*
- Chief Minister of Goa- Justification : *In Pre-GST regime, tax was paid on the net income of the Casino under the Entertainment Tax.*
- Fitment Committee Recommendation –Option-I
- *The value of supply of gambling and betting services by a casino operator shall be determined in the manner as provided below: (i) in cases where the casino operator charges a commission or participation fee, by whatever name called, from the players, the said commission or participation fee shall be the value of the supply; or (ii) in all other cases, the value of the supply shall be the revenue of the casino operator and shall be calculated in the following manner, namely,-*

- ***Value of supply*** *= (Value of the total stakes/bets placed by players) - (the winnings and other amounts paid out to such players in connection with the said stakes/bets)*

Explanation:– *For the purposes of this sub rule, the value of supply shall be determined at the end of the day by reference to the aggregate taxable value of transactions during that day.*

- The method of valuation as suggested above is the same which is followed globally and was in force in Sate of Sikkim as well as in Goa pre-GST.

8

Summary

- The taxable value of Supply of actionable claim may be based on the GGR, as the same is more certain and efficient measure.
- World over Casinos are taxed on GGR. Charging tax on Full Face value or sale of chips is not practical & viable. The same method was followed by Casinos in India in pre-GST.
- We, therefore suggest to insert a separate sub-rule in 31A with respect to casinos.

68

Thank You!

10

Turf Authorities of India

Horse Racing

- Under the CGST Act 2017, Section 7 read with Schedule III,makes it clear that actionable claims are exempted from being taxed, unless they are betting and gambling or lotteries.
- Both the Act and the Supreme Court judgments have made it clear that lotteries are taxable.
- Horse racing and bets placed thereon are not lotteries and therefore the only question is, whether they would be gambling and amount to betting on gambling.
- The judgments in Sunrise Associates and Skill Lotto deal only with lotteries.
- The only judgment which deals with horse racing is Dr. Lakshmanan case and horse racing is on a completely different footing than lotteries.

Horse Racing

- The Hon'ble Supreme Court in the RMD Chamarbaugwala case and Dr. Lakshmanan Case, has concluded that games of skill do not amount to gambling. This is now the law of the land under Article 141 of the Constitution of India.
- The CGST Act 2017 does not give any definition of "betting and gambling" or of a game of skill or chance. Therefore, the Supreme Court rulings on the same have to be applied.
- The Hon'ble Supreme Court has held that if substantial skill is involved, even if there is an element of chance, it would be a game of skill and would not amount to gambling.
- On this definition by the Supreme Court, it is clear that lotteries are only chance and therefore would amount to gambling. But horse racing is a game of skill.

Horse racing

- The only case which deals with horse racing is the case of Dr. Lakshmanan, which has expressly held that horse racing is a game of skill and does not amount to gambling. This judgment is binding under Article 141 of the Constitution of India.
  - *"31. In view of the discussion and the authorities referred to by us, we hold that the horse-racing is a game where the winning depends substantially and preponderantly on skill. ..."*

    "37. Horse-racing is not a game of chance and as such is not gambling."

    "44. The second aspect is the conduct of horse races by the club. Horse racing is a game of skill....."

Horse Racing

- Supreme Court has held that betting or wagering on a game of skill would not make it a gaming activity. For the same to amount to betting, it must be on a gambling activity, as is clear from the judgments of the Hon'ble Supreme Court and the Division Bench of the Hon'ble Madras High Court.
- Supreme Court in Dr. Lakshmanan held:

- "33 ***We, therefore, hold that wagering or betting on horse-racing - a game of skill-does not come within the definition of gaming' ….."***

- "34 ***Even if there is wagering or betting with the club it is on a game of mere skill and as such it would not be 'gaming' ……."***

In the Junglee Games case of the Madras High Court (DB):

"125 It is in such light that "Betting and gambling" in Entry 34 of the State List has to be seen, where betting cannot be divorced from gambling and treated as an additional field for the State to legislate on, apart from the betting involved in gambling. Since gambling is judicially defined, the betting that the State can legislate on has to be the betting pertaining to gambling; ergo, betting only on games of chance."

Horse Racing

- Horse racing stands on a separate footing, which has been specially dealt with by the Hon'ble Supreme Court. Therefore, bets placed on horse racing would be actionable claims not amounting to *"betting and gambling"* and hence exempted under Section 7 read with Schedule III of the CGST Act, 2017.
- In any event, the taxability under Section 15 of the CGST Act 2017 is the price for the value of the service rendered.
- In bets on a Totalizator, unlike bets with a bookmaker, the amount to be paid to the winning ticket is contingent and not fixed and is dependent upon the proportion of the entire amount wagered on the Totalizator. A club distributes this amount retaining only 5% for the service rendered by it and in sofar as balance 95% is concerned, is merely a trustee holding the amount wagered by numerous people. Therefore, the transaction value in a Totalizator would be the value of service supplied i.e accepting wagers from numerous people, retaining it in trust, calculating pro rata winnings and distributing it.

Conclusion-Horse Racing

i. Horse racing is a game of skill.

ii. Horse racing does not amount to gambling.

iii. Wagering or betting on games of skill would not be gambling.

iv. Betting for the purposes of taxability would only be betting if it is on a gambling activity.

v. Horse racing not being a gambling activity, wagers placed on the Totalizator would not amount to betting.

vi. Therefore, the exception to the exemption on actionable claims qua betting and gambling would not apply and therefore there can be no taxation on the bets placed with the totalizators.

vii. If no part of the betting money other than the 5% comes to the club even if it be held that the transaction is taxable, transaction value is on the services rendered and under section 15, would be the price actually paid for the services and such value of 5% would be the only value taxable.

IMPACT OF GST ON HORSE RACING AND BREEDING

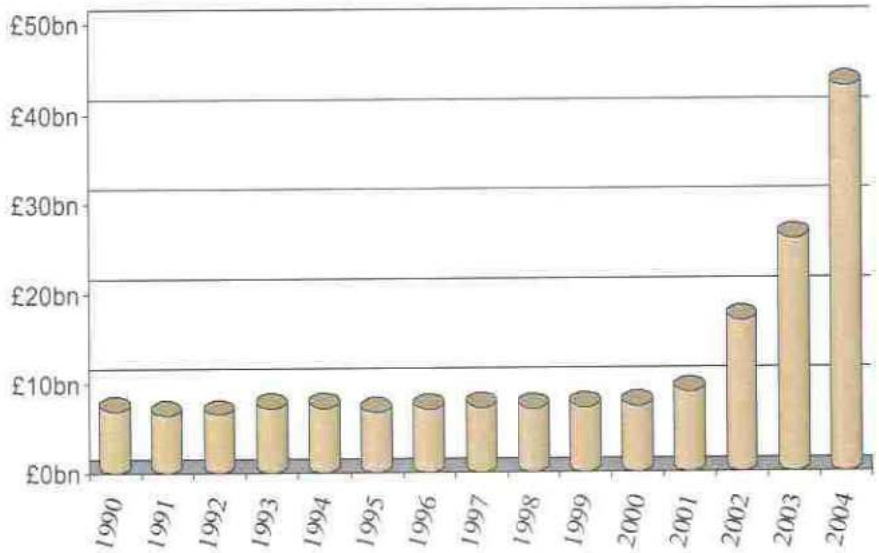
- Racing clubs in India are not for profit sporting clubs – the commissions earned by the clubs are all ploughed back into the industry as prize-money, welfare, etc. Racing stewards and committee members work in an honorary capacity.
- Major income of race clubs come from the totalizator. If the totalizator dwindles as it has now done, horse-racing and breeding cannot survive. (e.g. Royal Kolkata Turf Club)
- Before GST, betting on the totalizator was 6,000 crores. After the GST act of 2017, it has dropped down to 1,500 crores. The balance revenue has shifted to illegal, unregulated channels.
- Racing is an Agri-based industry which supports the livelihood of 3,50,000 employees from rural backgrounds and skills its employees.
- Horse breeding and racing has been a part of Indian heritage from Vedic times. Today it is at its lowest point. Post GST, approx. 25.4% of our Stud Farms have closed and several others are in the process of closing down. The number of broodmares (breeding stock) from last two years has reduced by 32%. There is a vast potential for exports to South-East Asian countries where there are no breeding farms and India could potentially earn substantial foreign exchange. However, for that, racing as a sport needs to have high prize money and govt. support and patronage by following International practices in GST taxation.

Year	Stud Farm	Mares
2019	67	2532
2021	50	1715
Percentage decline	25.4%	32%

INTERNATIONAL PRACTICES

- The following countries are taxed on the amount of bets received less winnings paid out:
  AUSTRALIA | MALAYSIA | UNITED KINGDOM | USA | NEW ZEALAND | SINGAPORE
- International practices and experience shows that those countries that have levied GST on earnings of the club, that is the 'amount of bets received less winnings paid out' have greatly benefitted by a huge increase in revenues to the government. A point in case is England, where post reduction of taxes on horse-racing has seen a 400% increase in revenues to the state.

UK OFF-COURSE BETTING TURNOVER 1990-2004



Honourable Group of Ministers (GoM) for Casinos, Race Courses, and Online Gaming

Joint representation by E-Gaming Federation (EGF) and Federation of Indian Fantasy Sports (FIFS)

July 12, 2022

Executive Summary

- Service Tax (12%-15%) & GST (18%) on online skill gaming has always been only on the **supply of service, i.e. the Gross Gaming Revenue** (Operator Revenue / Platform Fee), for 10+ years
- 28% on the face value would **increase tax** by **1,000%+** and render the industry unviable
- **Will move players to offshore grey market** operators
- Actionable claims **(other than lottery, betting and gambling)** are not supply of goods or services
- Multiple High Courts and the Supreme Court have ruled **games of skill are neither betting nor gambling**
- **MeitY + IMTF** are working on a national regulatory framework
- Industry request: **GST** in online skill gaming be levied **on Gross Gaming Revenue (GGR)** - as recommended by the **Fitment Committee in 2019** as the internationally prevalent practice

Business Model: Online Skill Gaming

Assuming 2 players are playing and they deposit Rs. 500 each

Game Entry Fee / Face Value per player	Rs. 50
Total Entry Fee / Face Value	Rs. 100
Prize Pool	Rs. 90
Gross Gaming Revenue (GGR)	Rs. 10 (10% of Total Face Value)
GST (Current regime, 18% on GGR)	Rs. 1.5
GST (28% on Face value)	Rs. 22 (1,000%+ increase, higher than GGR)

- Entry Fee, Face Value or Deposits are **not** revenue for gaming companies
- 28% GST on Face Value (**a 1,000%+ increase in tax**) will shift users to **grey market operators**

As per CGST Act, Entry Fees/Prize Pool in Online Skill Gaming is NOT[81] supply of Goods/ Services

- GGR = value of supply of service
- Prize Pool = Actionable claim (money distributed to winners, NOT retained by gaming companies)
- The CGST Act 2017 treats actionable claims (**other than lottery, betting and gambling**) as neither supply of goods nor supply of service
- Hon'ble Supreme Court's judgment in **Skill Lotto** Solutions Pvt Ltd vs Union of India is relevant **to lotteries and has NO applicability to games of skill**
- Online Gaming is **neither betting nor gambling**
-

As per Supreme Court & High Courts online skill gaming NOT Betting and Gambling

- The Hon'ble Supreme Court has consistently held for over 60 years that games of skill don't constitute gambling
- Recent High Court judgements have ruled that in legislative entry 34, the terms "Betting and Gambling" have to be read together and they cannot be read or construed separately; i.e. Betting only means games of chance and not games of skill
- Additionally, the Supreme Court recently affirmed a Rajasthan High Court ruling that games of skill don't constitute betting or gambling

Games of Skill salience recognised by Government of India

- **Policy for online gaming**
  - Government of India has announced setting up of an **IMTF** (Inter Ministerial Task Force) to work on **regulations for online gaming**
  - Ministry of Electronics and Information Technology (**MeitY**), is working with online skill gaming companies on a **national regulatory framework**


THE TIMES OF INDIA

Govt forms inter-ministerial panel to regulate online gaming

NEW DELHI: The government has set up an inter-ministerial panel to ... on regulations for the online gaming industry and identify a nodal ministry to look after the sector, an official source said on Thursday.
The seven-member panel includes government think-tank Niti Aayog's CEO as well as secretaries of home affairs, revenue, industries and internal trade, electronics and IT, information and broadcasting and sports.

The panel will look into various aspects to promote online gaming and frame regulatory mechanisms for the segment, protection of gamers, ease of doing business, among others, the source said.

Online Gaming Industry Prayer

- In summary, as per current law **games of skill cannot be taxed as betting or gambling**
- 28% on GGR is already a **55% increase** on Rs. 2,200 Cr (FY 22 GST contribution)
- Any other approach on levying GST on entry fees or deposits implies a **tax increase of 1,000%+ and would render the entire industry unviable**
- The industry requests that the **valuation approach for GST in online gaming be on the value of supply of service, which is Gross Gaming Revenue (GGR)**

Annexures

As per Supreme Court & High Courts online skill gaming NOT Betting and Gambling (1/3)

- **The Hon'ble Supreme Court has consistently held that games of skill don't constitute gambling.**
  - **State of Bombay vs RMD Chamarabugwala AIR 1957 SC 699; RMD Chamarbaugwala vs Union of India AIR 1957 SC 628 (Constitution Bench)**
    - Apex court observed, *"…As regards competitions which involve substantial skill, however different considerations arise.* ***They are business activities, the protection of which is guaranteed under Article 19(1)(g)***"
- **Betting and Gambling to be read together:** Legislative entry 34, reads the terms "Betting and Gambling" together and in law, they cannot be read or construed separately.

BACK

As per Supreme Court & High Courts online skill gaming NOT Betting and Gambling (2/3)

- Relevant High Court judgments:

- **Madras High Court:** Junglee Games India Pvt Ltd & Ors vs State of Tamil Nadu & Ors (August 03, 2021) Judgement by first bench led by Honourable Chief Justice Sanjib Banerjee

  - *" It is in such light that "**Betting and gambling**" in Entry 34 of the State List has to be seen, where **betting cannot be divorced from gambling** and treated as an additional field for the State to legislate on, apart from the betting involved in gambling. Since gambling is judicially defined, the betting that the State can legislate on has to be the betting pertaining to gambling; ergo, betting only on games of chance."*

- **Karnataka High Court:** All India Gaming Federation & Ors vs State of Karnataka (Feb 14, 2022) Judgment by division bench comprising Honourable Chief Justice Ritu Raj Awasthi and Honourable Justice Krishna S Dixit

  - *"The two words namely **"Betting" and "gambling" as employed in Entry 34, List II have to be read conjunctively to mean only betting on gambling activities** that fall within the legislative competence of the State."*

BACK

As per Supreme Court & High Courts online skill gaming NOT Betting and Gambling (3/3)

- Relevant High Court judgments:
  - **Rajasthan High Court:** Chandresh Sankhla vs State of Rajasthan (Sep 14, 2020)
    - *"15. This Court finds that the issue of **treating the game "Dream 11" as having any element of betting/gambling is no more res integra** in view of the pronouncements by the **Punjab and Haryana High Court** and **Bombay High Court** and further the **SLPs have also been dismissed against the orders of these High Courts.**"*
  - **Rajasthan High Court:** Ravindra Singh Chaudhary Vs Union of India (Oct 16, 2020)
    - *"Accordingly, the first issue as to **whether the online fantasy sports games offered on Dream11 platform are gambling/betting, is decided against the PIL petitioner**."*
  - ***This position** of the Rajasthan High Court has been been **affirmed by the Supreme Court** in the matter of* Avinash Mehrotra vs State of Rajasthan SLP Diary No. 18478/2020

BACK

International Best Practices

Country	Gross Gaming Revenue	Tax Rate
United kingdom	GGR	15%
Australia	GGR	10%
Czech Republic	GGR	6-20%
Germany	GGR	19%
Belgium	GGR	11-15%
Italy	GGR	20%
Slovakia	GGR	27%
Estonia	GGR	5%
Spain	GGR	25%
Greece	GGR	30%
Denmark	GGR	20%
Sweden	GGR	18%
Malaysia	GGR	8%
U.S.A	GGR	6.75%-2[illegible] 20%
Iowa (USA)	GGR	16.2%
Delaware (USA)	GGR	15.5%
Pennsylvania (USA)	GGR	16%
New Jersey (USA)	GGR	7.9%
Nevada (USA)	GGR	6.75%
Illinois (USA)	GGR	23.7%
Mississippi (USA	GGR	11.3%
Louisiana (USA)	GGR	21.7%
Colorado (USA)	GGR	13.2%

(1)

Mauvin H. Godinho
Minister of Panchayats, Transport, Housing,
Protocol & Legislative Affairs
302, Ministerial Block, Third floor, Secretariat, Porvorim, Goa-403 521.
Tel. No.: 0832-2419534 Fax: 0832-2419837

No. NOTE/MIN/PAN/2019/ 76 Date: MAY 21, 2022

To,
The Hon'ble Finance Minister,
Government of India,
North Block,
Delhi.

Sub: Request for kind intervention regarding valuation for GST with regards to Casinos.

Ref: Group of Ministers' ('GOM') decision on methodology of valuation for GST for Casinos.

Respected Madam,

In reference to the Group of Ministers' meeting regarding Casino, Race Courses and Online Gaming held on 18-05-2022, I would like to draw the attention of your good self to the below mentioned points which I had raised in the GoM as the same are extremely pertinent for the continuation of the industry and tourism activity in the state of Goa.

The GoM has recently discussed and reached the conclusion that the rate of GST on Casinos, Online Gaming and Horse Races should be 28% uniformly, all entry fee in any form (e.g. food, liquor, access to gambling etc.) to be taxed in a composite manner and the activities shall be taxed on Face Value or Gross Chips sold i.e. on the entire betting amount rather than the earning of the provider.

-Pg.2...

--Pg.2...

In this context and with this background, I, on behalf of Government of Goa would like to place the following issues on record for your kind consideration:

1. Goa had proposed to the GoM that the valuation for taxing Casinos should be done on ***Gross Gaming Revenue*** (i.e. Net Value after deducting the chips returned by the players). It is pertinent to note that this methodology of computation of tax was being done in the pre-GST era i.e. for the calculation of entertainment tax @ 15 % and continues to be done even after implementation of GST i.e. on revised percentage of 28%.

2. Goa had raised the legitimate concern that the changed valuation for activity in casinos may push customers either towards foreign countries or to informal / illegitimate channels and shall drive down betting through formal channels. This kind of illegal betting would adversely impact casino business as well as the tourism industry of Goa. This would eventually lead to loss of livelihood of casino employees as well as adverse effects on other ancillary industries such as taxi operators, restaurants, beach shacks, hotels, airlines, etc.

3. It is pertinent to note that the insertion of Rule 31A (3) of CGST Rules, 2017 i.e. *"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"* was done solely at the behest of the Government of Maharashtra, where horse racing is a big industry resulting in a huge tax benefit to the Government of Maharashtra. The blanket application of the rule to ALL categories of businesses under the head of 'Gambling & Betting' needs to be reexamined again by the Council.

4. The matter was also discussed in the 37th GST Council meeting wherein the fitment committee had recommended the 'value of supply' as the value of bets placed reduced by the payouts given to winners. Subsequently, the aforementioned GoM was constituted to evaluate all three forms of gaming i.e. casinos, horse racing and online gaming.

5. It may kindly be noted that the entire casino industry globally follows a uniform methodology of valuation and computation of tax which is based on GGR and not Face Value. The comparative method of valuation in other countries is attached at '**Annexure A**'. Therefore, there is no rationale for divergence from this globally tried and tested system.

-Pg.3...

-Pg.3....

6. Your kind attention is further drawn to the fact that the games offered in the casinos are predominantly games of international standards, played across the globe in the exact identical fashion. These games are based on probabilities and have an inherent house advantage/house edge ranging from 1% to 3 %, which effectively results in the casino/house holding/retaining anywhere between 13% to 16% of the money wagered. This is true for all casinos globally. Therefore, the onerous valuation methodology being proposed of the gross receipts being taxed instead of net revenue shall lead to industry closure.

Further, if it is proposed that the deduction of GST be made from the customer i.e. deduction of GST from his initial buy-in, I would like to impress upon that this concept of charging is unheard of and not a global practice. India's neighbouring countries such as Nepal and Sri Lanka who permit casino gaming do not levy any tax whatsoever on the buy-in, making them preferred and attractive destinations to go to, in the event this onerous valuation methodology is adopted and implemented.

7. Needless to add, the tourism industry was badly hit due to the COVID Pandemic. The proposed change in the methodology for computation of valuation of Casinos for the purpose of payment of GST will act as the final straw on the camel's back, breaking it completely, leading to catastrophic effects such as reduced or zero visitations resulting in eventual closure of business having ripple effect on other ancillary industries as well.

8. Since casinos are only specific to the State of Goa with minor onshore operations in Sikkim, no other state would have any impact with the existing law or change in law, hence it is critical that the submissions of the Government of Goa be taken into consideration again.

-Pg. 4...

9. In conclusion, it is submitted that GST should be levied on the GGR (i.e. the consideration received by the casino). Therefore, it is requested that the decision of the GoM be revisited to carefully consider/study the issue and come up with separate rules for casinos to levy GST on the Gross Gaming Revenue ('GGR'). The GGR/Turnover was the basis of calculation of Entertainment Tax in pre GST era as well. The same method is *globally* accepted and implemented as such, and the value of supply is calculated on GGR basis for computing taxes thereon.

10. I look forward to your good authority's support and intervention in this matter

Yours sincerely,

Mauvin H. Godinho

(Encl: as above.)

Sr. No.	Country	Tax Rates	Remarks
1	Singapore	• Land Based casino- 5 to15% of GGR • Lotteries -- 30%	The duty is fairly low, 5% of the GGR for premium players with a deposit account of $100,000 or 15% of the GGR for all other players.
2	Bulgaria	• Online Casinos: 20% tax of revenue • Land-based Casinos: $58,350 (BGN100,000) licensing fee + monthly fee per machine Sports betting, Lotteries, Bingo, and Keno: 15%	Land-based casinos are obliged by law to pay levies on each gambling machine as well as a licensing fee, while online gambling venues are taxed at a rate of 20% on revenue. Operators that run such forms of gambling establishments as Dog and Horse racing, Bingo, Keno, sports betting, and lotteries are subject to a 15% tax on the value of bets.
3	Italy	• Online Casinos: 25% of the GGR • Land-based sports betting: 20% of the GGR • Online sports betting: 24% of the GGR	According to the information revealed there, venues that offer online casino games to the Italians are charged a duty of 25% on all revenue. The land-based and online sports tax rate is 20% and 24% respectively.
4	UK	• Land-based Casinos: 15% of the revenue, depending on the GGY of the premises • Online Casinos: 21% of the revenue • Lotteries: 12% of the turnover • Bingo: 10% of the profit	Gambling taxes in the United Kingdom are somewhat mild, giving virtually free rein to gambling operators. The toughest tax laws apply to land-based casinos, with a taxation of 15% on the revenue. From October 1, 2019, 21% duty on the revenue. Lotteries and Bingo are the least taxable forms of gambling, with a tax of 12% on the turnover and 10% on the profit respectively.
5	Czech Republic	• Casinos: 19% corporate tax + 35% of the profits • Sports betting: 19% corporate tax + 23% of the revenue	On January 1, 2017, the authorities introduced a new, stricter tax system; one which obliges casinos to pay a 35% duty on the revenue and 19% corporate tax. As far as betting on sports is concerned, the operators are charged a fee of 23% on the profits, along with 19% corporate tax.
6	Denmark	• Online Casinos: 20% duty of the GGR (gross gaming revenue)	The taxation on online casino is less severe, amounting to a 20% fee on the GGR.
7	Finland	• Casinos: 10% of the GGR + 30% of the given out winnings • Lotteries: 10% of the GGR + 30% of the given out winnings • Totalizator: 9.5% of the	Casino and lottery operators are subject to a 10% tax on their Gross Gaming Revenue as well as they have to pay out 30% of the winnings given out to players.

		GGR	
8	USA	• Casinos: 20% (vary depending on the state) of the GGR Lotteries: yes	20% of GGR
9	Spain	• Land-based/Online casinos: 20% of GGR Remote sports betting: 20%	The Spanish parliament has recently slashed taxes on numerous online games of chance, encouraging foreign operators to tap a new market. Since July 2018, the tax levied on remote casinos and bookmakers is a flat 20%, compared to the previous 25%. Taxation on brick and mortar casinos remained at a rate of 20%. When it comes to the Spanish, their winnings aren't subject to any fee.
10	Netherlands	• Online/Land-based Casinos: 30.1% of the GGR	Netherlands Tax Authority website (belastingdienst.nl), doesn't provide data in English, while the information in Dutch is fairly ambiguous. As far as gambling operators are concerned, they are allegedly subject to a fee of 30.1% on their **Gross Gaming Revenue.**
11	Malta	A second Guideline clarifies how to calculate the VAT base for gaming services w.e.f. 1 January 2018. Essentially the considerations made are deemed to be the following:	• Where the supplier receives a rake – the consideration shall be the rake; • In all other cases, the consideration shall be total stakes/bets placed by the players (including bets placed using bonus credits) less the winnings and other amounts paid out to the players in connection with the bet (including bonus credit comprised within the bets placed). The consideration shall be deemed to be inclusive of VAT.
12	Macau	39% on GGR	• Macau charges an effective tax rate of 39 percent on casino GGR – with 35 percent via direct government tax, and the remainder via a number of levies to pay for a range of community good causes.

Date: May 25, 2022

To,

The Joint Secretary
GST Council Secretariat
New Delhi.

Sub: Representation for your kind intervention in the GST matter in relation to casinos.

Respected Madam,,

Ref: Group of Ministers' ('GOM') decision on method of valuation of supplies in Gambling & Betting activity in Casinos.

We refer to the above mentioned subject. We, the casino industry are in panic due to the reported outcome of GOM meeting held on May, 18, 2022. Earlier also not only the Industry has made multiple representation to Central as well as State GST authorities, but Government of Goa, also raised requests in council meeting to clear the confusion created by insertion of Rule 31A (3) in GST Law, which states as follows:

"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."

Though this amendment was brought in specifically for horse racing on the initiation of CCT Maharashtra in the 25th GST Council meeting held on January 18, 2018, it was interpreted as applicable to casino industry as well.

In this context and with this background, we would like to place the following issues on record for your kind consideration:

1. Goa is the only state where casinos are in operation since 1995. Other than Goa, Sikkim recently started few small casinos.

2. Government of Goa was collecting Entertainment tax @15% on the Chip Sale (net)/Turnover or Income of the casinos till 30th June 2017. This tax got subsumed in GST with effect from 1st of July 2017.

Unit : MAJESTIC PRIDE CASINO
Registered & Corporate Office : Hotel Neo Majestic, Plot No. 104/1A, Opp. Azad Bhavan, Porvorim Bardez, North - Goa, India - 403 521
Tel No.: 0832 6710000-199 | Website: www.majesticpride.in | Email: finance@majesticpride.in | CIN No.: U45200GA2012PTC007022

3. Since 1st of July 2017, Casinos are paying 28% GST, on same method of valuation as was there under Entertainment Tax Law. This system is working seamlessly

4. 25th GST Council decided to add new entry 229 for gambling & betting, in the list of supply of goods, without assigning HSN code. Also the decision was taken to prescribe method of valuation for gambling & betting supply component of horse racing and Rule 31A was notified.

5. The insertion of Rule 31A (3) was done solely at the behest of the Maharashtra Government, specifically for the betting & gambling component of horse racing, where horse racing is a big industry and give huge tax benefit to the Maharashtra Government. From the Agenda and minutes of 25th GST Council meeting, it is evident that the objective of introducing Rule 31A was only to clarify the method of valuation for the betting & gambling component of horse racing. Post this insertion, the DGGI-Hyderabad interpreted the Rule 31A, as applicable on all gambling & betting activities and started visiting casinos premises. That's when casinos started approaching Central & State Govt authorities.

6. Government of Goa in subsequent GST council meetings raised the concern and requested for clarification to avoid unnecessary harassment which could have made the industry bankrupt overnight. The Government of India has clearly stated that with the introduction of GST, neither the methodology of computation of tax nor the rate of tax will be detrimental to the assessee. Thus following this stand, the casinos in Goa are following the same pre GST methodology of computation of tax. Clearly that is not the case with Rule 31A (3) with reference to casinos, where both, the methodology as well as the tax rate is going to kill the casino business.

7. In the 33rd, 35th& 37th GST Council meetings, strong objections were raised by the Government of Goa through the Hon'ble Minister. Due to the confusion caused by the amendment, and the issues faced by the casinos due to the actions of DGGI, the Hon'ble Minister raised the issue in 35thGST Council meeting and suggested that a clarification be issued for charging tax on GGR (Gross Gaming Revenue, which is total Sales reduced by players winnings) basis for casinos.

8. Previously, the Hon'ble Minister has also raised a legitimate concern in Council meeting that the high tax incidence may push customers towards MATKA and other illegal options which would not be in anyone's interest. This kind of illegal betting will adversely impact casino business, forcing us to close our businesses, making several thousand people lose their livelihood. These include the casino employees as well as

all those other interested parties dependant on casino operations for their livelihood (taxi operators, restaurants, beach shacks, hotels, tourism, airlines, etc).

9. In the 37thGST Council meeting initiated a proposal for clarification on value of supply in the case of Casinos, on which the fitment committee recommended 'value of supply' as the value of bets placed reduced by the payouts given to winners. Subsequently a GOM was constituted to evaluate all three forms of gaming i.e. casinos, horse racing and online gaming.

10. We have come to know through media that the GOM so constituted, in its meeting of May 18, 2022, has taken a decision to recommend levy tax on total sale value of chips or initial pay in by the customer without allowing adjustment of customer winnings or return of chips by the customers. If this is true, then, it will be totally detrimental to the industry which is paying around Rs 400 crores annually to the Government of Goa in the form of license fees and Rs. 700-800 crores towards GST.

11. We once again respectfully submit that all these three business are totally different in nature and the same rule of valuation cannot be applied across all these three businesses. In fact, each business will need to be evaluated and studied separately, given its distinct nature, by duly qualified professionals/ finance & tax experts and a proper analysis will need to be done to deal with the issue at hand in a practical yet intelligent manner, in keeping with globally accepted, tried and tested methodologies. We are not sure if a proper study of the casino business has been done by the concerned persons who understand the modalities/mechanism of how the business operates.

12. All over the world, especially in countries like the United Kingdom, USA, Australia, Ireland, Denmark, Austria, Italy, Finland, China, Canada, Singapore, Malta, Thailand and New Zealand, the entire casino industry globally follows a uniform methodology of valuation and computation of tax, so we do not see any rationale for divergence from this globally tried and tested system, especially when the divergence will result is killing the industry and eventually cutting off all revenue to the State Government.

13. This unreasonable method of valuation may force casinos to shut down and the concern raised by the Hon'ble Minister may come true as customers will move to illegal gaming platforms which will not only be a huge revenue loss to the Government but there will be a huge negative impact on the economy which has developed around casinos in the form of huge employment creation as well as ancillary businesses such as transport, taxis, car hires, hotels, restaurants, F&B suppliers, etc. At a rough estimate the casino industry directly employs 7000 people (thereby supporting an average 6 additional persons in the family of each employee, making it 42,000 people that casinos provide a living to). Add to that the income generated by hotels, restaurants, car owners, taxis, etc will easily support another 5000 persons in Goa. Surely our industry merits the strongest support of the State Government, which we are happy to say we have always received. Further, casino industry enhances and give boost to entire tourism industry which has led to changing of Goa from seasonal tourism destination to year round tourism destination. Many hotels, restaurants, taxi operators, and other ancillary industry is largely dependent upon the casino industry.

14. We would further like to draw your attention to the fact that the games offered in the casinos are predominantly games of international standards, played across the globe in the exact identical fashion. These games are based on probabilities and have an inherent house advantage/house edge ranging from 1% to 3 %, which effectively results in the casino/house holding/retaining anywhere between 13% to 16% of the money wagered. This is true for all casinos globally. Therefore, the onerous valuation methodology being proposed pursuant to the GOM meeting of May 18, 2022 defies mathematical and scientific logic of levying 28%, when the revenue itself is between 13% to 16%.

15. Further, it should also be noted that the concept of charging the customer i.e. deduction of GST from his initial buy-in is unheard of and not a global good practice. India's neighbouring countries such as Nepal and Sri Lanka who permit casino gaming do not levy any tax whatsoever on the buy-in, making them preferred and attractive destinations to go to, in the event this onerous valuation methodology is adopted and implemented. Besides Kathmandu, Nepal has allowed casinos along the border with India like Zapa in North-east Boarder, Nepalganj in UP Boarder, Lumbini in Bihar Border etc. which does not have GST. As such, they offer attractive offers to the players which is leading to loss of revenue.

16. Needless to add, the tourism industry was badly hit due to the COVID Pandemic, however it is important to note that the Casino industry was forced to suspend all its operations for a period of almost 12 months in the last 24 months. As a result of this, the Government exchequer too has been adversely affected. The proposed change in the methodology for computation of valuation for the purpose of payment of GST will act as the final straw on the camel's back, breaking it completely, leading to catastrophic effects such as reduced or zero visitations resulting in eventual closure of business having ripple effect on other ancillary industries which have flourished thanks to the casino industry.

17. We humbly request your good Authority to revisit decision of GOM, to carefully consider/study the issue and come up with separate rules for casinos on the lines of the method already suggested by the Hon'ble Minister of Goa in the 35th Council meeting to levy GST on the Gross Gaming Revenue ('GGR'). The GGR/Turnover was the basis of calculation of Entertainment Tax in pre-GST era as well. The same method is *globally* accepted and implemented as such and the value of supply is calculated on GGR basis for computing taxes thereon.

18. Since casinos are only specific to the State of Goa with minor onshore operations in Sikkim, no other state would have any impact with the existing law or change in law, hence it is critical for the Government of Goa to protect its own interests apart from supporting the casino industry. We further add that, after closure of mining industry, Goa is heavily dependent upon tourism industry for SGST as from other manufacturing industry Goa state doesnot get SGST share due to the fact that Goa is not a consumer state. On one side, countries like UAE have understood the impertinence of Casino industry to boost tourism industry and have allowed casino project against the Sharia law, on the other side, we are killing existing industry and diverting business to the neighbouring countries.

19. We wish to place on record that, there is a fundamental error of interpretation which is done by GOM is to determine the casino chips as 'Goods' and thereby every purchase of chips would attract GST. We wish to clarify that, Chips is property of casino and is used as token in lieu of money as people cannot place physical money as bet. This would lead to dispute among the players and further cause delay in counting each and every bet. Even if, for argument sake chip is to be treated as goods, then GST is to be returned on goods return when chips are returned by the players. Further GOM has ignored the fact that, no customer shall pay GST at the time of purchase of chips as world over, people get chips equal to money paid. Hence, the whole premise of this decision is based on wrong interpretation and wrong notion, which needs to be corrected.

20. Lastly, we wish to state that, Casinos are already charged annual licence fees ranging from Rs. 33.00 Crore per annum to Rs. 44.00 Crore per annum (depending upon the size). To add to this, 28% GST on GGR, 25% income tax on Net profit, 10% Surcharge and 2% CSR. Besides, casinos are also charged Excise licence fees and all other licence fees, separately.

We humbly request reconsider the method of valuation on casino income at the next Council meeting to make necessary changes in law such that we continue paying taxes on GGR basis, which is the rational and globally accepted way forward, should the industry have any hope for survival.

In conclusion, we submit that GST should be levied on the GGR (i.e. the consideration received by the casino). The benefits of levying GST on GGR include:

i. Alignment to the principle of GST to levy taxes on consideration received;
ii. Alignment with internationally adopted tax policies;
iii. Viability of business and revenue generation;
iv. Market protection as black market operators will be reduced; and
v. Provide clarity to entire ecosystem including Government, business and consumers alike.

Looking forward to your good Authority's support and intervention in this matter to help our industry which is currently faced with a very bleak future.

Yours truly,

For and on behalf of Golden Peace Infrastructure Pvt. Ltd.,

(Owner and operator of Majestic Pride Casino, Goa)

Authorised Signatory.

Comparison on taxation on casino industry in various countries.

Sr. NO.	Country	Region	Annual Licence fees (INR)	GST or Tax on Gaming Revenue	Income Tax/ Corporate Tax	Any other Tax
1	INDIA		Rs. 33.00 Crore to Rs. 44 Crore depending upon size	28% on GGR	25% on Net Profit. + 10% Surcharge	2% CSR, Exicse Licence fees, Garbage fees and many more.
2.	Nepal	Immediate Neighboring countries and Asian countries which are directly competing with India market.	Rs. 2.00 Crore irrespective of size	NIL	22% of Net Profit	NIL
3.	Sri Lanka		Rs. 10.00 Lac Per annum	NIL	25% on Net Profit	NIL
4.	Macau			39%	NIL	
5	Malaysia			5%	24%	
6.	Singapore			5% to 15%	17%	
7.	Philippines	Other Asian Countries		5%	30%	
8.	Japan			Not legal	29.74%	
9.	Cyprus	Competing Market to India.		Up to 13%	12.5%	
10.	Mauritius			15% to 35%	15%	
11.	Georgia			10%	15%	
12.	UAE			NIL	9% corporate tax from 2024	NIL
13.	UK			Up to 50%	19% at present to be increased to 25% from 1st April 2023	
14.	Denmark			45% to 75%	22%	
15.	Germany			20% to 80% of Gaming	29.9%	

				Revenue		
16.	Italy			Up to 25%	27.81%	
17.	Portugal			15%	31.5%	
18.	USA			Up to 51%	25.75%	
19.	Australia			Up to 65%	30%	
20.	South Africa			6.5% of GGR	It is 28% for CY and 27% from next year	

In the above chart, comparison should be made only between countries which are in direct competition with India Market as countries like Germany, Italy, Denmark are not catering to Indian market mainly due to VISA restrictions and travel cost. Secondly it is also important to note that, our neighboring countries like Nepal, Sri Lanka, Macau, Singapore, Malaysia are also catering to Bangladesh, China, Pakistan, UAE markets due to their liberalized forex policies and India is only dependent upon domestic market due to our ancient forex laws which are not updated or made compatible to gaming industry.

CASINO ASSOCIATION OF GOA

May 25, 2022

To,
The Hon'ble Finance Minister,
Government of India,
North Block,
New Delhi, 110001.

Sub: Request for kind intervention in the GST matter in relation to casinos.

Respected Madam,

Ref: Group of Ministers' ('GOM') decision on method of valuation of supplies in Gambling & Betting activity in Casinos.

We refer to the above mentioned subject. We are in panic due to the reported outcome of GOM meeting held on May, 18, 2022. Earlier also not only the Industry has made multiple representation to Central as well as State GST authorities, but Government of Goa, also raised requests in council meeting to clear the confusion created by insertion of Rule 31A (3) in GST Law, which states as follows:

"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."

Though this amendment was brought in specifically for horse racing on the initiation of CCT Maharashtra in the 25th GST Council meeting held on January 18, 2018 (hereto annexed and marked **Annexure '1'** is the relevant extract from the minutes of the 25thGST Council meeting).

In this context and with this background, we would like to place the following issues on record for your kind consideration:

1. Goa is the only state where casinos are in operation since 1995. Other than Goa, Sikkim recently started few small casinos.

2. Government of Goa was collecting Entertainment tax @15% on the Chip Sale (net)/Turnover or Income of the casinos till 30th June 2017. This tax got subsumed in GST with effect from 1st of July 2017.

ADDRESS: HOTEL NEO MAJESTIC, PLOT NO. 104/1A, PORVORIM, NORTH GOA, GOA-403521
Email Id: casinoassociationgoa@gmail.com

3. Since 1st of July 2017, Casinos are paying 28% GST, on same method of valuation as was there under Entertainment Tax Law. This system is working seamlessly

4. 25th GST Council decided to add new entry 229 for gambling & betting, in the list of supply of goods, without assigning HSN code. Also the decision was taken to prescribe method of valuation for gambling & betting supply component of horse racing and Rule 31A was notified.

5. Though the insertion of Rule 31A (3) was done solely at the behest of the Maharashtra Government, specifically for the betting & gambling component of horse racing, where horse racing is a big industry and give huge tax benefit to the Maharashtra Government. From the Agenda and minutes of 25th GST Council meeting, it is evident that the objective of introducing Rule 31A was only to clarify the method of valuation for the betting & gambling component of horse racing. (Extract of agenda & minutes attached for ready reference). The DGGI-Hyderabad interpreted the Rule 31A, as applicable on all gambling & betting activities and started visiting casinos premises. That's when casinos started approaching Central & State Govt authorities.

6. Government of Goa in subsequent GST council meetings raised the concern and requested for clarification to avoid unnecessary harassment which could have made the industry bankrupt overnight. The Government of India has clearly stated that with the introduction of GST, neither the methodology of computation of tax nor the rate of tax will be detrimental to the assessee. Thus following this stand, the casinos in Goa are following the same pre GST methodology of computation of tax. Clearly that is not the case with Rule 31A (3) with reference to casinos, where both, the methodology as well as the tax rate is going to kill the casino business.

7. In the 33rd, 35th& 37th GST Council meetings, strong objections were raised by the Government of Goa through the Hon'ble Minister. Due to the confusion caused by the amendment, and the issues faced by the casinos due to the actions of DGGI, the Hon'ble Minister raised the issue in 35thGST Council meeting and suggested that a clarification be issued for charging tax on GGR (Gross Gaming Revenue, which is total Sales reduced by players winnings) basis for casinos (hereto annexed and marked **Annexure '2'** is the relevant extract from the minutes of the 35th GST Council meeting).

8. Previously, the Hon'ble Minister has also raised a legitimate concern in Council meeting that the high tax incidence may push customers towards MATKA and other illegal options which would not be in anyone's interest. This kind of illegal betting will

adversely impact casino business, forcing us to close our businesses, making several thousand people lose their livelihood. These include the casino employees as well as all those other interested parties dependant on casino operations for their livelihood (taxi operators, restaurants, beach shacks, hotels, tourism, airlines, etc).

9. At our request, Government of Goa through its representatives, in the 37th GST Council meeting initiated a proposal for clarification on value of supply in the case of Casinos, on which the fitment committee recommended 'value of supply' as the value of bets placed reduced by the payouts given to winners (hereto annexed and marked **Annexure '3'** is the relevant extract from the minutes of the 37th GST Council meeting). Subsequently a GOM was constituted to evaluate all three forms of gaming i.e. casinos, horse racing and online gaming.

10. Now we have come to know through media that the GOM so constituted, in its meeting of May 18, 2022, has taken a decision to recommend levy tax on total sale value of chips or initial pay in by the customer without allowing adjustment of customer winnings or return of chips by the customers. If this is true, then, it will be totally detrimental to the industry which is paying around Rs 400 crores annually to the Government of Goa in the form of license fees and Rs. 700-800 crores towards GST.

11. We once again respectfully submit that all these three business are totally different in nature and the same rule of valuation cannot be applied across all these three businesses. In fact, each business will need to be evaluated and studied separately, given its distinct nature, by duly qualified professionals/ finance & tax experts and a proper analysis will need to be done to deal with the issue at hand in a practical yet intelligent manner, in keeping with globally accepted, tried and tested methodologies. We are not sure if a proper study of the casino business has been done by the concerned persons who understand the modalities/mechanism of how the business operates. In fact, we request a proper taskforce or committee to be formed to understand the business, world-wide best practices followed and mode of operation of casinos in India (Goa).

12. All over the world, especially in countries like the United Kingdom, USA, Australia, Ireland, Denmark, Austria, Italy, Finland, China, Canada, Singapore, Malta, Thailand and New Zealand, the entire casino industry globally follows a uniform methodology of valuation and computation of tax, so we do not see any rationale for divergence

from this globally tried and tested system, especially when the divergence will result is killing the industry and eventually cutting off all revenue to the State Government.

13. This unreasonable method of valuation may force casinos to shut down and the concern raised by the us may come true as customers will move to illegal gaming platforms which will not only be a huge revenue loss to the Government but there will be a huge negative impact on the economy which has developed around casinos in the form of huge employment creation as well as ancillary businesses such as transport, taxis, car hires, hotels, restaurants, F&B suppliers, etc. At a rough estimate the casino industry directly employs 7000 people (thereby supporting an average 6 additional persons in the family of each employee, making it 42,000 people that casinos provide a living to). Add to that the income generated by hotels, restaurants, car owners, taxis, etc will easily support another 5000 persons in Goa. Surely our industry merits the strongest support of the State Government, which we are happy to say we have always received. Further, casino industry enhances and give boost to entire tourism industry which has led to changing of Goa from seasonal tourism destination to year round tourism destination. Many hotels, restaurants, taxi operators, and other ancillary industry is largely dependent upon the casino industry.

14. We would further like to draw your attention to the fact that the games offered in the casinos are predominantly games of international standards, played across the globe in the exact identical fashion. These games are based on probabilities and have an inherent house advantage/house edge ranging from 1% to 3 %, which effectively results in the casino/house holding/retaining anywhere between 13% to 16% of the money wagered. This is true for all casinos globally. Therefore, the onerous valuation methodology being proposed pursuant to the GOM meeting of May 18, 2022 defies mathematical and scientific logic of levying 28%, when the revenue itself is between 13% to 16%. (As per study published by UK Gaming Authority).

15. Further, it should also be noted that the concept of charging the customer i.e. deduction of GST from his initial buy-in is unheard of and not a global good practice. India's neighbouring countries such as Nepal and Sri Lanka who permit casino gaming do not levy any tax whatsoever on the buy-in, making them preferred and attractive destinations to go to, in the event this onerous valuation methodology is adopted and implemented. Besides Kathmandu, Nepal has allowed casinos along the border with India like Zapa in North-east Boarder, Nepalganj in UP Boarder, Lumbini in Bihar

Border etc. which does not have GST. As such, they offer attractive offers to the players which is leading to loss of revenue.

16. Needless to add, the tourism industry was badly hit due to the COVID Pandemic, however it is important to note that the Casino industry was forced to suspend all its operations for a period of almost 12 months in the last 24 months. As a result of this, the Government exchequer too has been adversely affected. The proposed change in the methodology for computation of valuation for the purpose of payment of GST will act as the final straw on the camel's back, breaking it completely, leading to catastrophic effects such as reduced or zero visitations resulting in eventual closure of business having ripple effect on other ancillary industries which have flourished thanks to the casino industry.

17. We humbly request your good Authority to revisit their decision of GOM, to carefully consider/study the issue and come up with separate rules for casinos on the lines of the method already suggested by the Hon'ble Minister of Goa in the 35th Council meeting to levy GST on the Gross Gaming Revenue ('GGR'). The GGR/Turnover was the basis of calculation of Entertainment Tax in pre GST era as well. The same method is *globally* accepted and implemented as such and the value of supply is calculated on GGR basis for computing taxes thereon.

18. Since casinos are only specific to the State of Goa with minor onshore operations in Sikkim, no other state would have any impact with the existing law or change in law, hence it is critical for the Government of Goa to protect its own interests apart from supporting the casino industry. We further add that, after closure of mining industry, Goa is heavily dependent upon tourism industry for SGST as from other manufacturing industry Goa state does not get SGST share due to the fact that Goa is not a consumer state. On one side, countries like UAE have understood the impertinence of Casino industry to boost tourism industry and have allowed casino project against the Sharia law, on the other side, we are killing existing industry and diverting business to the neighbouring countries.

19. We wish to place on record that, there is a fundamental error of interpretation which is done by GOM is to determine the casino chips as 'Goods' and thereby every purchase of chips would attract GST. We wish to clarify that, Chips is property of casino and is used as token in lieu of money as people cannot place physical money as bet. This would lead to dispute among the players and further cause delay in counting each and every bet. Even if, for argument sake chip is to be treated as goods, then GST is to be

returned on goods return when chips are returned by the players. Further GOM has ignored the fact that, no customer shall pay GST at the time of purchase of chips as world over, people get chips equal to money paid. Hence, the whole premise of this decision is based on wrong interpretation and wrong notion, which needs to be corrected.

20. Lastly, we wish to state that, Casinos are already charged annual licence fees ranging from Rs. 33.00 Crore per annum to Rs. 44.00 Crore per annum (depending upon the size). To add to this, 28% GST on GGR, 25% income tax on Net profit, 10% Surcharge and 2% CSR. Besides, casinos are also charged Excise licence fees and all other licence fees, separately. We are also enclosing here with a comparative chart of taxation in various countries in the world as per **Annexure 4** for your perusal.

We humbly request re-consider State's submission and pursue the same at the next Council meeting to make necessary changes in law such that we continue paying taxes on GGR basis, which is the rational and globally accepted way forward, should the industry have any hope for survival.

In conclusion, we submit that GST should be levied on the GGR (i.e. the consideration received by the casino). The benefits of levying GST on GGR include:

i. Alignment to the principle of GST to levy taxes on consideration received;
ii. Alignment with internationally adopted tax policies;
iii. Viability of business and revenue generation;
iv. Market protection as black market operators will be reduced; and
v. Provide clarity to entire ecosystem including Government, business and consumers alike.

Looking forward to your good Authority's support and intervention in this matter to help our industry which is currently faced with a very bleak future.

Yours truly,

For and on behalf of Casino Association of Goa,

1. Delta Corp Ltd.

2. Delta Pleasure Cruise Company Pvt. Ltd.

3 Golden Peace Infrastructure Pvt. Ltd.

4 Goa Coastal Resorts and Recreation Pvt. Ltd.

5. Golden Peace Hotels and Resorts Pvt. Ltd.

6. Highstreet Cruises and Entertainment Pvt. Ltd.

7. Worldwide Resorts and Entertainment Pvt. Ltd.

WORLDWIDE RESORTS & ENTERTAINMENT PVT. LTD.

Director / Authorised Signatory

8. Goldenglobe Hotels Pvt. Ltd.

Encl: as above.

CC:

1. Shri Tarun Bajaj, Secretary (Revenue), 1st Floor, Room No. 128B, North Block, New Delhi – 110001.
2. Shri Vivek Johri, Chairman, Central Board of Indirect Taxes and Customs, 1st Floor, Room No. 153, North Block, New Delhi – 110001.
3. Shri D. P. Nagendra Kumar, Member (GST/CX/ST/Legal), Central Board of Indirect Taxes and Customs, 1st Floor, Room No. 156E, North Block, New Delhi – 110001.
4. Dr. C. S. Mahapatra, Additional Secretary, Goods and Service Tax Council Secretariat, Tower II, 5th Floor, Jeevan Bharati Building, Connaught Place, New Delhi – 110001.

25th

Annex III 8

51	CCT, Maharashtra	Clarification is sought onvaluation of supply of betting in Horse Racing. To provide clarity in the matter of valuation of these goods, provisions of section 15(5) may be invoked. Supply of Betting & Gambling is also required to be notified separately as per the mandate of Sub section 5 of Section 15 of the Act. Further, for valuation of the specified Goods, i.e. Betting & Gambling - valuation rules need to be prescribed separately on lines of Para 3 of Notification No. 11/2017 – Central Tax (Rate) / State Tax (Rate). Following rule 35A (2) may be inserted after Rule 35 in chapter IV, Determination of Value of Supply in CGST / SGST Rules, 2017. Rule 35A (2): Notwithstanding anything contained in the provisions of this chapter, value of supply of Betting & Gambling shalibe 100 % of the face value of the bet or the amount paid into the totalisator.	Valuation of betting & gambling (goods) will beunder the provisions of Section 15(1) or Section 15(4) or Section 15(5). In view of the aforesaid sections and valuation rules, it is opinion of State of Maharashtra that since for betting & gambling, rules are not framed under Section 15(4) and 15(5), provisions of Section 15(1) will be applicable. But this provision may be mis-used by the trade by deducting the prize money from the amount paid for betting and treating the remaining amount as the transaction value liable to be taxed under Section 15(1). The same issue is applicable in case of lottery also. However, in case of lottery, the issue is handled by providing rule of valuation of lottery in Notification No. 11/2017- Central Tax (Rate). Similar rule is also required for valuation of betting in order to eliminate the possibility of deducting prize money from the bet amount for the purpose of valuation.	Proposal of Maharashtra to insert following valuation rule in the rules may be accepted: Notwithstanding anything contained in the provisions of this chapter, value of supply of Betting & Gambling shall be 100 % of the face value of the bet or the amount paid into the totalisator. **Fitment Decision:** Following provision may be inserted in GST rules under section 15 of Act, - Notwithstanding anything contained in the provisions of this chapter, value of supply of Betting & Gambling shall be 100 % of the face value of the bet or the amount paid into the totalizator.

		(It is assumed that a new Rule 35A(1) for lottery on similar lines is inserted in CGST / SGST Rules, 2017) The whole discussion with respect to betting is equally applicable to gambling also. (Refer Entry (v) of Entry 35 in the Notification 11/2017-Central Tax (Rate) dated 28th June 2017). Hence, the amendments or the clarifications should be done considering gambling also. A legally binding clarification explaining taxation of lottery, betting & gambling be issued as per present provisions of Law.		

a. The differential rate of GST for State organized lotteries and State authorized lotteries (12% and 28% respectively) should continue.
b. Regarding the place of supply rules for paper lotteries, decision of the 28th GST Council Meeting should be strictly adhered to for reasons cited above. Any deviation would be ultra vires to Lottery Regulation Act and Rules and as such, it should not be made.
c. Present system of valuation of lottery on MRP should continue as it ensures more transparency. Lotteries should be traded as "goods" only.
d. Kerala was an online lottery free zone and under no circumstances, Government of Kerala would permit sale of online lotteries within the State.

Kerala was willing to negotiate with the North Eastern States to address their concern regarding revenue from lotteries and he pleaded that this agenda might be deferred giving room for further negotiations.

27.24. Shri M.S. Srikar, CST, Karnataka stated that there was intelligible distinction between the two types of Lotteries. Further, as regards the question whether there should be a single rate or double rate, his State would go with the consensus decision of the Council. The Hon'ble Minister from Jharkhand stated that in his State, there was no Lottery. Further, he believed that lottery should be banned. However, if the Federal structure was at stake, then the Council should go for a single rate and that too, the highest rate, because he believed in one nation, one rate. Advisor (Fe Finance) to Governor of Jammu & Kashmir stated that there was no lottery in his State and he would go with consensus on the subject.

27.25. The Hon'ble Minister from Goa stated that he was also a member of the GoM on Lottery and a lot of deliberation had been done on the subject. Now Punjab was of the view that the Council should wait for the decision of the Hon'ble Supreme Court. Further, the Hon'ble Supreme Court had clearly opined that the views of the GST Council should be made known to them by a specific date. Thus, the Council needed to decide first on it. On all other occasions, the Council had converged to a decision but on lottery, no consensus was emerging. The smaller States like Goa and other North Eastern States were being punished for the sake of revenue of the bigger States. He further stated that in his opinion, there should be one single rate as Goa preferred one nation, one tax. He also stated that he wanted to present the case of taxation of Casinos, where no other State was impacted as Casinos were only in Goa. He was not requesting for reducing the rate and was agreeable to any rate that was decided by the Council through consensus. However, the problem was regarding methodology and procedure for deciding the value for tax purpose i.e. face value or bet amount. It would be fair if net amount or Gross Gaming Revenue (GGR) was taxed, whereas, as on date, it was being taxed on face value. Hence, effectively, it was taxed at every bet or round; which would result in closure of casino. After mining had been stopped in Goa, the casino was a major source of revenue to the State and had also become a huge employment generating industry. The only proposal was that this matter should be referred to the Fitment Committee or the Law Committee so that the methodology and the tax on net amount or Gross Gaming Revenue (GGR) could be decided.

CHAIRMAN'S INITIALS

27.26. Shri Suresh Bhardwaj, the Hon'ble Minister from Himachal Pradesh, Capt. Abhimanyu, the Hon'ble Minister from Haryana, Shri Buggana Rajendra Nath, the Hon'ble Minister from Andhra Pradesh and the Secretary and Commissioner, State Tax from Chattisgarh submitted that lottery was banned in their States and its tax rate did not impact

37th.

Annex - III

Sl. No.	Proposal	Justification	Fitment Committee Recommendation
3	Request for clarification of taxability and valuation of supply in Casinos. Ref: CM of Goa	Goa state issues license for operating casinos in the State. In Casinos, there are two parts, first part is customer buys a package to enter the casino. Second part is gaming zone, where customer buys casino chips by exchanging legal currency. The valuation method prescribed in the Circular No. 27/01/2018-GST dated 04.01.2018 is practically difficult to implement as the customer plays many games at each table. Calculating GST on each bet in the gaming zone is not possible. In pre-GST regime, tax was paid on the next income of the Casino under the Entertainment Tax.	**Recommendation: Deferred.** **Matter is before the GoM on lottery.** **(1) Option 1** **The value of supply of gambling and betting services by a casino operator shall be determined in the manner as provided below:** **(i) in cases where the casino operator charges a commission or participation fee, by whatever name called, from the players, the said commission or participation fee shall be the value of the supply; or** **(ii) in all other cases, the value of the supply shall be the revenue of the casino operator and shall be calculated in the following manner, namely,-** **Value of supply = (Value of the total stakes/bets placed by players) - (the winnings and other amounts paid out to such players in connection with the said stakes/bets)** **Explanation:– For the purposes of this sub-rule, the value of supply shall be determined at the end of the day by reference to the aggregate taxable value of transactions during that day.** **(2) Option 2** **(i) Rule 31A of CGST Rules may be** **amended as below:** **Value of supply in case of Casino:-** **(a) For entry into casino, the value of supply shall be 100 percent of the transaction value charged for the entry to the casino and** **(b) For gambling and betting services provided by a casino operator, the value of**

able to attend the last meeting of the GoM and also the Hon'ble Minister from Goa had highlighted the need for further discussion in GoM which had till now only given an interim report. Hence, the GoM should be allowed to give its final report before it was discussed in the Council.

27.5. The Hon'ble Minister from West Bengal stated that he also could not attend the last meeting of the GoM due to some other compulments. He supported the proposal of the Hon'ble Ministers from Kerala and Goa. He suggested that the GoM should meet again as in the last meeting, four members of the GoM were not present. The Hon'ble Minister from Goa stated that there was a need to arrive at some consensus soon as due to high rate of tax on Lottery, unethical practices like *Matka, Satta*, etc. were picking up. He added that the issue should be discussed holistically and remedies arrived at. The Hon'ble Deputy Chief Minister of Delhi stated that few major States namely Punjab and Kerala could not attend the last meeting of the GoM and it was clear that more dynamic discussion was needed in the GoM before its recommendation could be brought back to the Council.

27.6. The Hon'ble Minister from Assam stated that this issue had been alive from the very first days of GST and the State of Kerala wanted to tax Lottery at the rate of 28%. He questioned as to why there should be a discriminatory tax rate regime on Lottery and as to why Lottery of Kerala (State-organized) should be taxed at the rate of 12% whereas lottery of North-Eastern States (State-authorised) should be taxed at the rate of 28% when it was run as per the prescribed guidelines by the Union Ministry of Home Affairs. He stated that any type of discriminatory tax rate should be removed. He further stated that even if the matter was deferred today, eventually there was a need to arrive at a just solution on this issue and the rate of tax would need to be made uniform, be it 12%, 18% or 28%. He added that discriminatory rate of tax should not be persisted with. He reiterated that the Union Home Ministry had allowed lottery to be run through authorized representatives and they were running the lottery as per those guidelines.

27.7. The Hon'ble Chairperson enquired whether inter-State sale of lottery could be prohibited. The Hon'ble Minister from Kerala stated that prior to GST regime, in his State there was a tax on paper lottery under the Paper Lotteries Act and they had made stringent law by legislation under the Gambling Act because of which, for eight years, no outside lottery could be run in the State of Kerala.

27.8. The Hon'ble Minister from Assam stated that legally a State which was running its own lottery could not ban Lottery from other States and that market access would need to be allowed to the Lottery of other States as well. The Hon'ble Minister from Kerala stated that on this account they had taken recourse to Section 4 of the Gambling Act to stop the outside lotteries. The Hon'ble Chairperson enquired that if Kerala had a State monopoly over lottery and there was no outside lottery running, then what was the issue regarding the rate of tax on lottery of other States like Mizoram, Assam etc. The Hon'ble Minister from Kerala stated that their position on this had been that such State authorized Lottery distributors violated provisions of Section 4 of the Gambling Act. He informed that court cases were going on this issue and there was also a CAG report on it and subsequently, Central Government banned such lotteries in the State of Kerala. He added that such lotteries (State-authorised) could run in their State now when GST was implemented, and the tax as per Paper Lotteries Act had

CHAIRMAN'S INITIALS

Annexure - IV

Comparison on taxation on casino industry in various countries.

Sr. NO.	Country	Region	Annual Licence fees (INR)	GST or Tax on Gaming Revenue	Income Tax/ Corporate Tax	Any other Tax
1	INDIA		Rs. 33.00 Crore to Rs. 44 Crore depending upon size	28% on GGR	25% on Net Profit. + 10% Surcharge	2% CSR, Exicse Licence fees, Garbage fees and many more.
2.	Nepal	Immediate Neighboring countries and Asian countries which are directly competing with India market.	Rs. 2.00 Crore irrespective of size	NIL	22% of Net Profit	NIL
3.	Sri Lanka		Rs. 10.00 Lac Per annum	NIL	25% on Net Profit	NIL
4.	Macau			39%	NIL	
5	Malaysia			5%	24%	
6.	Singapore			5% to 15%	17%	
7.	Philippines	Other Asian Countries		5%	30%	
8.	Japan			Not legal	29.74%	
9.	Cyprus	Competing Market to India.		Up to 13%	12.5%	
10.	Mauritius			15% to 35%	15%	
11.	Georgia			10%	15%	
12.	UAE			NIL	9% corporate tax from 2024	NIL
13.	UK			Up to 50%	19% at present to be increased to 25% from 1st April 2023	
14.	Denmark			45% to 75%	22%	
15.	Germany			20% to 80% of Gaming	29.9%	

				Revenue		
16.	Italy			Up to 25%	27.81%	
17.	Portugal			15%	31.5%	
18.	USA			Up to 51%	25.75%	
19.	Australia			Up to 65%	30%	
20.	South Africa			6.5% of GGR	It is 28% for CY and 27% from next year	

In the above chart, comparison should be made only between countries which are in direct competition with India Market as countries like Germany, Italy, Denmark are not catering to Indian market mainly due to VISA restrictions and travel cost. Secondly it is also important to note that, our neighboring countries like Nepal, Sri Lanka, Macau, Singapore, Malaysia are also catering to Bangladesh, China, Pakistan, UAE markets due to their liberalized forex policies and India is only dependent upon domestic market due to our ancient forex laws which are not updated or made compatible to gaming industry.

Regn. No. S/36201

AIFLTAI
Member FICCI
Affiliated to CII

ALL INDIA FEDERATION OF LOTTERY TRADE & ALLIED INDUSTRIES

Head Office F-225, First Floor, New Rajinder Nagar, New Delhi - 110 060 Tel : 47563805, 28743460
Fax 011-28742973; e-mail aifltai@airtelmail.in, aifltai@gmail.com; website www.india-lotteries.org

118

Secy (Revenue)

12 July, 2022

Smt. Nirmala Sitharaman
Hon'ble Finance Minister
Government of India
15, Safdarjung Road
New Delhi
e-mail id: fmo@nic.in

Dy. No. 2731046 FM/IM/P/2022
Dated 15/7/2022

Sub: **Representation to cover "TEER" within the ambit of GST in order to provide a level playing field to similar industries.**

Respected Madam,

As an association for representing Lottery industry on Pan India Basis, we would like to mention that the Revenue as GST collection from the sale of Lotteries has risen multifold since the inception of GST. The industry after a long hurdles and many setbacks as a result of transition to comply with the newly incorporated GST provisions has now been settled and providing a huge revenue to the States as well as the Central Government in the form of GST. As per the recent data, GST collections from Lotteries have crossed 4000 crores annually and still showing the signs of growth and enormous opportunities. (Details of GST paid on sale of Lotteries in the last Financial Year 2021-22 is attached herewith for your reference). However, we, as an association to represent the Lottery industry, feel that the GST levied on the sale of Lotteries suffer from the biasness when compared to the rate and valuation of other Gambling / Betting and Online Gaming industries. The result of such biased rate gives the undue advantage to such Betting / Gambling / Online and illegal Games which at present is hurting the Lottery Industry and thereby creating several other law & order issues.

As per the Meeting of Group of Ministers held on 18.05.2022, they have agreed to levy 28% GST on Casinos, Race Course and Online Gaming. Such decision is welcomed by this Federation as it will provide a level playing field to the Lottery Industry which alone was suffering from the highest rate of Tax as GST.

Even after ignoring the above mentioned drawback, we would like to draw your kind attention towards the Game called "TEER" especially in the State of Meghalaya, which is spreading its legs over several parts of India through the medium of Digitization and unsolicited means. This "TEER" is currently not being governed or regulated by either the Central Government or the State Government. This game is currently marketed in the name of Traditional Game of some of the North Eastern states like the State of Meghalaya. Even the GST Act and Rules do not cover this game, and it is again providing them the undue advantage to spread its leg on Pan India basis and damage the other Gaming / Betting and Lottery Industry.

As per our survey and study conducted, if "Teer" falls within the ambit of GST, the revenue collection via "Teer" may arrive at par or even cross the revenue collected from Lotteries. If GST is levied on such game, it will not only help the Central and the State Governments to generate revenue, but will also provide a level playing field to the similar industries such as Lottery / Online Gaming, etc.

[Contd – 2]

Further, we would like to mention that one of our Members (M/s Future Gaming & Hotel Services Pvt. Ltd.) is currently selling Lottery Tickets in the State of Meghalaya since March 2022, and have given a good revenue to the State as well as Central Government in the form of GST till date. Total GST paid on sale of Lottery Tickets in the State of Meghalaya from the period between March 2022 and June 2022 is more than ₹ 1.9 crores. (Details of GST paid are attached for your ready reference) whereas, neither the State nor the Central Government has received any revenue from "Teer".

If GST is levied on such Game, the collections under GST may go up substantially. Therefore, we request your kind attention towards this Game which is currently not covered under the Provision of GST or any other law and take appropriate decisions to help the similar industries by providing them the level playing field.

Thanking you

Yours faithfully,
For All India Federation of Lottery Trade & Allied Industries

Authorised Signatory

Contact Person: Shri Ajay Suri
Phone No: 98100 55705

Encls: As above

Details of GST paid on sale of Lotteries by M/s Future Gaming & Hotel Services Pvt. Ltd. for FY 2021-2022

₹ in Crores

Sl. No.	Month	Total
1	Apr-21	347.47
2	May-21	133.93
3	Jun-21	116.40
4	Jul-21	295.51
5	Aug-21	336.61
6	Sep-21	340.78
7	Oct-21	364.50
8	Nov-21	394.74
9	Dec-21	430.65
10	Jan-22	443.49
11	Feb-22	419.77
12	Mar-22	449.69
	Total	**4,073.55**

GOODS AND SERVICES TAX
PAYMENT RECEIPT

CPIN: 22071700000898 Deposit Date : 06/07/2022 Deposit Time : 16:11:51 e-Scroll : NA

Payment Particulars

CIN: UTIB22071700000898 Name of Bank: AXIS BANK BRN: 712734430

Details of Taxpayer

GSTIN: 17AABCM9751G1ZA E-mail Id: fXXXXX@XXXXXXom Mobile No.: 9XXXXX9598

Name: FUTURE GAMING AND HOTEL SERVICES PRIVATE LIMITED Address : XXXXXXXXX Meghalaya,793101

Reason For Challan

Reason: Any other payment

Details of Deposit (All Amount in Rs.)

Government	Major Head	Minor Head

		Tax	Interest	Penalty	Fee	Others	Total
Government of India	CGST(0005)	2319818	-	-	-	-	2319818
	IGST(0008)	-	-	-	-	-	-
	CESS(0009)	-	-	-	-	-	-
	Sub-Total	2319818	0	0	0	0	2319818
Meghalaya	SGST(0006)	2319818	-	-	-	-	2319818
Total Amount							4639636
Total Amount (in words)		Rupees Fourty-Six Lakhs Thirty-Nine Thousand Six hundred Thirty-Six Only					

Mode of Payment: Internet Banking - AXIS BANK

Notes:
1. Status of the transaction can be tracked under 'Track Payment Status' at GST website
2. Payment status will be set as 'Paid' for this transaction.
3. This is a system generated receipt.

GOODS AND SERVICES TAX
PAYMENT RECEIPT

CPIN: 22061700001115 Deposit Date : 07/06/2022 Deposit Time : 16:44:40 e-Scroll : NA

Payment Particulars

CIN: UTIB22061700001115 Name of Bank: AXIS BANK BRN: 712437418

Details of Taxpayer

GSTIN: 17AABCM9751G1ZA E-mail Id: f)OXXXX@XXXXXXXom Mobile No.: 9XXXXX9598

Name: FUTURE GAMING AND HOTEL SERVICES PRIVATE LIMITED Address : XXXXXXXXXX Meghalaya,793101

Reason For Challan

Reason: Any other payment

Details of Deposit (All Amount in Rs.)

Government	Major Head	Minor Head

		Tax	Interest	Penalty	Fee	Others	Total
Government of India	CGST(0005)	2822098	-	-	-	-	2822098
	IGST(0008)	-	-	-	-	-	-
	CESS(0009)	-	-	-	-	-	-
	Sub-Total	2822098	0	0	0	0	2822098
Meghalaya	SGST(0006)	2822098	-	-	-	-	2822098
Total Amount							5644196
Total Amount (in words)		Rupees Fifty-Six Lakhs Fourty-Four Thousand One hundred Ninety-Six Only					

Mode of Payment: Internet Banking - AXIS BANK

Notes:
1. Status of the transaction can be tracked under 'Track Payment Status' at GST website
2. Payment status will be set as 'Paid' for this transaction.
3. This is a system generated receipt.

GOODS AND SERVICES TAX
PAYMENT RECEIPT

CPIN: 22051700002081 Deposit Date : 11/05/2022 Deposit Time : 14:05:34 e-Scroll : NA

Payment Particulars

CIN: UTIB22051700002081 Name of Bank: AXIS BANK BRN: 712165055

Details of Taxpayer

GSTIN: 17AABCM9751G1ZA E-mail Id: fXXXXX@XXXXXXom Mobile No.: 9XXXXX9598

Name: FUTURE GAMING AND HOTEL SERVICES PRIVATE LIMITED Address : XXXXXXXXXX Meghalaya,793101

Reason For Challan

Reason: Any other payment

Details of Deposit (All Amount in Rs.)

Government	Major Head	Minor Head

		Tax	Interest	Penalty	Fee	Others	Total
Government of India	CGST(0005)	2721167	-	-	-	-	2721167
	IGST(0008)	-	-	-	-	-	-
	CESS(0009)	-	-	-	-	-	-
	Sub-Total	2721167	0	0	0	0	2721167
Meghalaya	SGST(0006)	2721167	-	-	-	-	2721167
Total Amount							5442334
Total Amount (in words)		Rupees Fifty-Four Lakhs Fourty-Two Thousand Three Hundred Thirty-Four Only					

Mode of Payment: Internet Banking - AXIS BANK

Notes:
1. Status of the transaction can be tracked under 'Track Payment Status' at GST website
2. Payment status will be set as 'Paid' for this transaction.
3. This is a system generated receipt

GOODS AND SERVICES TAX
PAYMENT RECEIPT

CPIN: 22041700002587 Deposit Date : 12/04/2022 Deposit Time : 14:47:01 e-Scroll : NA

Payment Particulars

CIN: UTIB22041700002587 Name of Bank: AXIS BANK BRN: 711751769

Details of Taxpayer

GSTIN: 17AABCM9761G1ZA E-mail Id: fXXXXX@XXXXXXXom Mobile No.: 9XXXXX9598

Name: FUTURE GAMING AND HOTEL SERVICES PRIVATE LIMITED Address : XXXXXXXXXX Meghalaya,793101

Reason For Challan

Reason: Any other payment

Details of Deposit (All Amount in Rs.)

Government	Major Head	Minor Head

		Tax	Interest	Penalty	Fee	Others	Total
Government of India	CGST(0005)	1695317	-	-	-	-	1695317
	IGST(0008)	-	-	-	-	-	-
	CESS(0009)	-	-	-	-	-	-
	Sub-Total	1695317	0	0	0	0	1695317
Meghalaya	SGST(0006)	1695317	-	-	-	-	1695317
Total Amount							3390634
Total Amount (in words)		Rupees Thirty-Three Lakhs Ninety Thousand Six hundred Thirty-Four Only					

Mode of Payment: Internet Banking - AXIS BANK

Notes:
1. Status of the transaction can be tracked under 'Track Payment Status' at GST website
2. Payment status will be set as 'Paid' for this transaction.
3. This is a system generated receipt.

Details of GST Paid by
M/s Future Gaming And Hotel Services Pvt. Ltd
in the state of Meghalaya

Month	GST Paid @28%
March, 2022	Rs 33,90,634
April, 2022	Rs 54,42,334
May, 2022	Rs 56,44,196
June, 2022	Rs 46,39,636
TOTAL	**1,91,16,800**

TURF AUTHORITIES OF INDIA

ROYAL CALCUTTA TURF CLUB
Calcutta Race Course, Hastings
KOLKATA 700 022.
Phone : 22487170/9286
22488352/22489502
Fax : 91 33 22316953
: 91 33 22482787
E-mail : secy@rctconline.com
Website : www.rctconline.com

ROYAL WESTERN INDIA TURF CLUB, LTD.
Race Course, Mahalakshmi
MUMBAI - 400 034
Phone : 23071401/07
23071438/41
23071396
Fax : 91-22-23071437
: 91-22-23080351
E-mail : secretary@rwitc.com
Website : www.rwitc.com

MADRAS RACE CLUB
Guindy,
CHENNAI - 600 032.
Phone : 22351171/2/3/5
Fax : 91-44-22351553
91-44 22301660
E-mail : ceo@madrasraceclub.com
mrcsecy@gmail.com
Website : www.madrasraceclub.com

BANGALORE TURF CLUB LTD.
52, Race Course Road,
BANGALORE - 560 001.
Phone : 22262391/2/3
22286421
Fax : 91-80-22206372
91-80-22256995
E-mail : secretary@btcraces.com
Website : www.bangaloreraces.com

HYDERABAD RACE CLUB
Malakpet,
HYDERABAD - 500 036
Phone : 24549491/2
24549159
Fax : 91-40-24546483
91-40-24540170
E-mail : secy@hydraces.com
Website : www.hydraces.com

MYSORE RACE CLUB LTD
Race Course Road
MYSORE - 570 010.
Phone : 0821-2521675
Fax : 0821-2520249
E-mail : secmysrace@gmail.com
mysoreraces@gmail.com
Website : www.mysoreraceclub.com

Mr. Conrad Sangma,
Hon'ble Chief Minister of Megalaya
Chairman, Group of Ministers.
Shillong, Meghalaya.

July 5, 2022

Subject : Representation on Taxation of Turf Clubs pertaining to betting through totalisator and permission to meet the Hon'ble Members of the GOM and make a presentation

Respected Sir,

At the outset, we on behalf of the Turf Authorities of India, thank You for giving us another opportunity to represent our case once again before the Hon'ble Members of the GOM.

Sir, The Hon'ble Union Finance Minister, at the press meet, post the GST Council Meeting, on 29th June 2022, stated that "the Stake Holders can represent their case once again before the GOM...."

Attached please find another presentation clearly clarifying the main issue- which is "that payouts to the winners by a Race Club is not an Actionable Claim". In view of the facts produced in the attached representation and in all fairness, the Turf Authorities of India would like to seek an appointment with the Honorable Members of the GOM to explicate the facts that concerns our industry. The Horse Racing industry is at the brink of collapsing due to the unviable GST application on the prize money which does not fall in the ambit of Actionable Claim. It is most crucial and imperative that we are given the opportunity to a fair hearing before the Counsel decides the fate of the oldest sport industry in our country.

We sincerely hope that our request will be acceded and await your positive response.

Thanking you,
Yours sincerely,

Zavaray S. Poonawalla
Chairman, GST Cell
Counsel Member, Turf Authorities of India

Encl : Representation on Taxation of Turf Clubs pertaining to betting through totalisator.

TURF AUTHORITIES OF INDIA

ROYAL CALCUTTA TURF CLUB
Calcutta Race Course, Hastings
KOLKATA 700 022
Phone : 22487170/9786
22488352/22489502
Fax : 91 33 22316853
91 33 22482787
E-mail : secy@rctconline.com
Website : www.rctconline.com

ROYAL WESTERN INDIA TURF CLUB, LTD.
Race Course, Mahalakshmi
MUMBAI 400 034
Phone : 23071401/07
23071438/41
23071396
Fax : 91-22-23071437
91 22 23090351
E-mail : secretary@rwitc.com
Website : www.rwitc.com

MADRAS RACE CLUB
Guindy
CHENNAI 600 032
Phone : 22351171//2/3/5
Fax : 91-44-22351653
91 44 22301660
E-mail : ceo@madrasracaclub.com
mrcsecy@gmail.com
Website : www.madrasracetlub.com

BANGALORE TURF CLUB LTD.
52, Race Course Road,
BANGALORE 560 001
Phone : 22262391/2/3
22266421
Fax : 91 80 22208372
91 80 22256895
E-mail : secretary@btcraces.com
Website : www.bangaloreracet.com

HYDERABAD RACE CLUB
Malakpet,
HYDERABAD 500 036.
Phone : 24549481/2
24549159
Fax : 91-40-24548483
91-40-24540170
E-mail : secy@hydraces.com
Website : www.hydraces.com

MYSORE RACE CLUB LTD
Race Course Road
MYSORE 570 010.
Phone : 0821-2521675
Fax : 0821-2520248
E-mail : secmysrace@gmai
mysoreracet@gma
Website : www.mysoreracac

DATED: 04.07.2022

To,

Mr. Conrad Sangma,
Hon'ble Chief Minister of Megalaya
Chairman, Group of Ministers.
Shillong, Meghalaya

SUBJECT: REPRESENTATION TO THE GROUP OF MINISTERS ON TAXATION OF TURF CLUBS PERTAINING TO BETTING THROUGH TOTALISATOR

I. INTRODUCTION

1.1. Horse Racing is a sporting activity which traces its formal origin in India back to 1777 when the first racecourse in India was set up in Madras[1]. Horse racing is recognised as a sport and is internationally governed by the International Federation of Horseracing Authorities. Beyond the formal setting up of the activity in India, common lore and mythology dating back to Vedic scriptures have been filled with stories involving horse racing and the same spurred the cultural acceptance of horse racing in India. India has one of the most elaborately established horse racing cultures in the world and the sport

[1] *'Survivors of time. Madras Race Club – A canter through centuries'*, Anusha Parthasarathy, The Hindu. Available online at:

has considerable popular appeal in India. Events such as the Invitation Cup in Bombay have seen crowds of up to 40,000 viewers in the past[2] and form important events in the societal calendar. One of the best-regulated sports in India, it is estimated that around 3.5 lakh families earn their livelihood through the horse racing industry in India[3].

1.2. The activity of horse racing in India is spearheaded by the Turf Authorities of India which is a member of the International Federation of Horseracing Authorities. The Turf Authorities of India comprises of six Turf Authorities, viz. The Royal Calcutta Turf Club, The Royal Western India Turf Club, Madras Race Club, Bangalore Turf Club Ltd., Hyderabad Race Club and Mysore Race Club Limited (collectively, **"the Turf Clubs"**). Numbers suggest that India supports over 5000 steeds, and hosts over 20,000 livestock across 50 breeding farms, indicating at a sprawling industry with various facets of livelihood[4].

1.3. **IF A GST OF 28% ON FACE VALUE OF BET OR PER TRANSACTION IS IMPOSED, THE RACE CLUBS WHICH ARE NON PROFIT ENTITIES WILL HAVE TO SHUT DOWN. OVER 3.5 LAKH PEOPLE WILL LOSE THEIR JOBS. HORSE BREEDING AND ANIMAL HUSBANDRY AROUND IN INDIA WILL BE DESTROYED. ALL THIS WILL HAPPEN, JUST BECAUSE THERE IS A POTENTIAL THAT THE GOVERNMENT OF INDIA WILL MAKE MORE TAX REVENUE. THIS THINKING BEING FUNDAMENTALLY FLAWED, AS SUCH RATE OF GST WILL ONLY DRIVE PUNTERS TO THE CRIMINALS WHO OFFER BETS IN THE BLACK MARKET.**

2. BETTING ON HORSE RACING AND THE DISTINCTION BETWEEN BETTING ON HORSE RACING AND THE REST OF THE GAMING INDUSTRY

2.1. As important as horse racing has been to the Indian cultural environment, an intrinsic factor that has contributed to the industry is the activity of betting on the horse races that take place across the Turf Clubs in India. Horse racing and betting on horse racing have gone hand-in-hand for decades and exists, in what can be compared to a symbiotic

---

[2] *'Horse racing in India assumes the proportions of a gigantic industry'*, Dilip Bobb, India Today, Available online at: https://www.indiatoday.in/magazine/cover-story/story/19840415-horse-racing-in-india-assumes-the-proportions-of-a-gigantic-industry-803564-1984-04-15

[3] *'High GST has adversely impacted horse racing: TAI'*, Vinayak M Zodge, The Hindu, Available online at: https://www.pressreader.com/india/the-hindu/20200521/282359746907560

[4] *Id.*

relationship. The commission from totalisator based betting on horse racing, is completely reinvested into equestrian farms, payment of jockeys, maintenance of racecourses, hiring trainers for steeds and the improvement of breeding amongst other administrative expense pertaining to horse racing. This directly affects and contributes to the sustenance and improvement of the quality of horse racing, thereby driving the industry forward.

2.2. The revenue/commission generated from totalisator betting on horse racing is therefore utilised positively and supports the livelihood of many individuals associated with the operation and conduct of horse racing in India including trainers, breeders, jockeys and people involved in the upkeep of the racecourses. The Turf Clubs are by their constitutions, non-profit organisations and utilise the proceeds merely as a means of sustenance for an industry that feeds upwards of 3.5 lakh families.

2.3. This systemic approach overseen by not-for-profit entities is what distinguishes totalisator based betting on horse racing from the rest of the gaming industry in general. The Turf Clubs function using a totalisator mode of accumulating bets and a portion of their income goes into services such as:

2.3.1. Primarily facilitating and providing the races to viewers and punters;

2.3.2. Providing a facility for the installation of the tote machine;

2.3.3. Providing the tote machine;

2.3.4. Maintaining the integrity of races by appointing stewards to monitor the races and its participants; and

2.3.5. Providing a facility for the punters to view races and place bets with totalisator.

2.4. A totalisator is a device that displays the number and total amount of bets staked on a race, to facilitate the division of the total bets made by the punters on the winning horses. A fixed percentage of the amount placed as a bet, is charged as a service fee for providing and organizing the event of horse racing and the facilitation of the service of betting on horse racing, as a commission. It is the only amount earned by the said Turf Clubs. The Turf Clubs therefore do not act as bookmakers or provide odds pertaining to the races. They merely facilitate the placing of bets by punters as stated above, through totalisators installed on the premises of the Turf Clubs.

2.5. Further, in determining the status to be granted to betting on horse racing under the law, the Hon'ble Supreme Court of India in the case of ***Dr. KR Lakshmanan Vs. State of Tamil Nadu***[5], held that betting on horse racing involves a substantial amount of skill, while terming it as an entertainment activity. In declaring betting on horse racing to be a '*game of skill*' the Hon'ble Supreme Court of India also held that horse racing has been universally recognised as a sport and that the activity involves considerable skill, technique and knowledge.

2.6. The activity/business of horse racing therefore is eligible for protection granted by Article 19 (1) (g) of Constitution of India on account of it being a legitimate business activity.

3. COMMENTS ON THE PROPOSED MODE OF IMPOSING GST BY THE HON'BLE GROUP OF MINISTERS AS AVAILABLE IN THE MEDIA

A) WHETHER BETTING ON HORSE RACING THROUGH TOTALISATOR FALLS WITHIN THE AMBIT OF 'BETTING AND GAMBLING' AS ENVISAGED IN SCHEDULE III CGST 2017

3.1. Goods have been defined to mean 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. Actionable claim has been defined to have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882.

3.2. Section 3 of the Transfer of Property Act defines "actionable claim" to mean 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, occurring, conditional or contingent.

[5] AIR 1996 SC 1153

3.3. It may be noted that the activity of totalisator based betting falls within the ambit of actionable claim, as the bet placed only entitles a punter to the beneficial interest of an ability to win, based on a contingent event. However, Schedule-III to the CGST Act, 2017 lists down the activities or transactions which shall be treated, neither as a supply of goods nor a supply of services. Clause 6 of the said Schedule covers actionable claims, other than **'lottery, betting and gambling'** meaning thereby that the activity of lottery, betting and gambling will be taxable under GST.

3.4. In the case of ***Junglee Games India Private Limited and Ors. Vs. The State of Tamil Nadu and Ors.***[6], the Hon'ble Madras High Court took note of the arguments of the petitioners seeking to differentiate betting on games of skill from betting on gambling activities, especially in the context of Entry No. 34 of *"Betting and gambling"* of the State List of Schedule Seven of the Constitution of India. The petitioners therein argued the fact that the field in Entry 34 of "*Betting and gambling*" must be understood in the context of gambling as involving an activity of pure chance, where skill is either not involved at all or involved to the most minimal extent. Therefore, the activity included under Entry 34 should only be construed to mean the activity of betting in light of gambling and not betting per se, such as betting on games of skill, which ought to be completely outside the ambit of Entry 34. The Hon'ble Madras High Court observed that Article 246 of the Constitution of India referred to the Entries in the various lists as "*matters enumerated*". The Hon'ble High Court further observed that the usage of the conjunction *"and"* indicated the breath of the field covered by the Entry. Therefore, whilst accepting the arguments raised by the petitioners, the Hon'ble Madras High Court, *inter alia* held that the word "*betting*" in the entry *"Betting and gambling"* could not be seen as being divorced from gambling and be treated as an additional field for a State to legislate on, apart from betting involved in gambling.

3.5. Rule 31A(3) which is subordinate to the CGST Act 2017, it has wrongly been construed that betting on horse racing through totalizator, falls within the fold of **'betting and gambling'**. This invalidates the status granted to betting on horse racing as a game of skill as stated by the Hon'ble Supreme Court in ***K.R. Lakshmanan***[7] and the interpretation given by the Hon'ble Madras High Court pertaining to the words 'betting

[6] MANU/TN/5230/2021. Judgment delivered by the Hon'ble Madras High Court on 03.08.2021. Appeal pending before the Hon'ble Supreme Court of India
[7] AIR 1996 SC 1153

and gambling', which must be read as betting on gambling and not betting on horse racing.

B) BETTING ON HORSE RACING DIFFERENT FROM LOTTERIES, THEREFORE JUDICIAL INTERPRETATION PERTAINING TO TAXATION OF LOTTERIES SHOULD NOT BE APPLIED TO IT

3.6. The Bangalore Turf Club challenged the imposition of GST on face value of bets placed on the totalisator, before the Hon'ble Karnataka High Court in ***Bangalore Turf Club Limited and Ors. Vs. Union of India***[8]. The Hon'ble Karnataka High Court *inter alia* ruled that the Turf Clubs are not liable to pay GST on the entire 100% of the face value of the bet or amount paid into the totalisator while striking down Rule 31A (3) of the Central GST Rules, 2017 and the corresponding rule in the Karnataka GST Rules, 2017. The Hon'ble Karnataka High Court held that the Turf Clubs were merely liable to pay GST on the commission collected by them for facilitating the service of betting through totalisator and further also ruled that the clubs are entitled for all consequential benefits that flow from this verdict. This decision of the learned single judge bench has been appealed before the division bench of the Karnataka High Court and its operation has been stayed. However, as on the date of this representation, it is humbly submitted that this judgment of the Hon'ble Karnataka High Court currently holds the field on the aspect of collection of GST from Turf Clubs and that the principles laid down in the above decision are settled and form the right interpretation of the law pertaining to taxation of totalisator based betting on horse racing.

3.7. It is also humbly submitted that while the judgment of the Supreme Court of India in ***Skill Lotto Solutions Pvt. Ltd. V. Union of India***[9] deriving from the judgment of the Supreme Court of India in ***Sunrise Associates v. Govt. of NCT of Delhi & Ors***[10] observes the need for taxation of lottery, there was no specific reference made to the activity of horse racing or consideration pertaining to the same as an actionable claim. Therefore, such a consideration made by the Hon'ble Supreme Court, should not be extended to totalisator based betting on horse racing, as the activity should not be considered in the same light as lotteries as elucidated previously in this representation. It

[8] MANU/KA/2134/2021 Judgment delivered on 02.06.2021. Appeal pending before the Division Bench of the Hon'ble Karnataka High Court. Important paragraphs – 25, 33, 34.
[9] 2020 SCC Online SC 990
[10] (2006) 5 SCC 603

may also be noted that lottery is governed under entry 40 of the Union List while betting and gambling is entry 34 of the State list. Therefore the distinction between these two manners of gaming is recognised under the Constitution of India. Further judicial interpretation of what constitutes 'betting and gambling', has been settled by the Hon'ble High Court of Madras in the *Junglee Games case*.

3.8. It is our understanding from media reports that the GoM seeks to impose GST at the rate of 28% on the total value of bets, while deriving the principle from taxation and judicial pronouncements pertaining to lottery. There is a fallacy in this argument as betting on horse racing is distinct, principally and even in judicial interpretations, from **'Lottery, betting and gambling'**

c) WHAT IS THE INCIDENCE OF TAX

3.9. The imposition of GST on the total value of bets is prejudicial to race clubs and is against the principles of taxation. It is a settled principle of a taxation statues that for a transaction to be taxable, there has to be a taxable event, a rate of tax and measure of tax.

3.10. Section 9[1] of the Central Goods and Services Tax (CGST) Act, 2017 is the charging section, under which tax is levied on any intra-state supplies of goods or services on the value determined under section 15 and at such rates, as may be notified by the Government. Hence, under GST, the taxable event is supply of goods or services or both. The term supply has been defined in an inclusive manner under section 7 of the CGST Act, 2017 according to which for a transaction to qualify as supply the following elements must be present:-

(a) There should be a supply of goods or services or both such as sale, barter, lease etc.

(b) Such supply should be for a consideration; and

(c) Supply should be made by the person in the course or furtherance of its business

Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal. Thus, with such an expansive definition, supply will include any transaction which includes supply of goods or services in any form.

[1] Similar provisions exist under section 5 of Integrated Goods and Services Tax (IGST) Act, 2017 which levies IGST on inter-state supplies of goods or services or both

3.11. The above-mentioned provisions are to be relied on while determining the taxability of totalisator based betting on horse racing. **"Service"** has been defined to mean anything other than goods, money and securities but include activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged. In the case of horse racing, the punters place bets through the totalisator or bookmaker. The role of race club is limited to that of providing the facilities. The race club charges a commission/fee for providing such facilities. Provision of such facilities to punters for a commission qualifies as service under GST, provided the incident of GST is the commission.

3.12. Further, A transaction qualifies as supply for the purpose of levy of GST under section 7(1)(a) of the CGST Act, 2017 only if there is a consideration which flows from the recipient of the supply to the person making the supply. The term 'consideration' has been defined under section 2 (31) of the CGST Act to inter-alia include any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government. A payment will qualify as consideration only if the same is in respect of, in response to or for the inducement of supply of goods or services or both. Thus, consideration[12] embodies the concept of quid pro quo (something in return).

3.13. In the case of horse racing (when dealing with the prize money only and not the commission charged), in the absence of any underlying supply of goods or services by the race club, the money so collected by the totalisator which is to be distributed later as prize money is not in lieu of any supply provided by the race clubs. This money is held only in trust on behalf of the punters, which will be later given to the winning punter.

3.14. The Totalisator has been defined under the Mysore Betting Tax Act 1932, under 2(6) as:

> "Totalisator means a totalisator in an enclosure which [the licensees have set apart in accordance with the provisions of [the Mysore Race Courses Licensing Act, 1952], and includes any instrument, machine or contrivance known as the totalisator, or any other instrument, machine or contrivance of a like nature or a sweep or any other

[12] Apple and Pear Development Council vs. Commissioners of Customs and Excise (C-102/86), R. J. Tolsma v. Inspecteur der Omzetbelasting Leeuwarden, (C-16/9)

scheme for **enabling any number of persons to make bets with one another on the like principles"**

3.15. Thus, the money so held by the totalisator does not qualify as consideration in the absence of element of *quid pro quo*. Moreover, the money so collected by the totalisator is not recorded as its revenue hence the same would not partake the nature of being consideration. Therefore, it is clear that the taxable event itself for imposing the tax is missing in the current transaction. Therefore if a tax is to be levied, it can be levied on the services provided by the race club even pertaining to the bets taken on the totalizator, as only this can be taken to be the supply element of a service. This element of service is captured in the commission charged by the race clubs. Transaction between punters of an actionable claim, by exchanging prize money, cannot and should not be taxed in the hands of the race club. The race club never acts as a bookmaker, when it comes to operation within a totalisator. To draw a basic distinction, a bookmaker provides odds on his own and punters bet against the bookmakers. In totalisator based betting, all bets all placed with the totalisator, odds are calculated based on the amounts of bets placed and one punter acts as a bookmaker for another punter, a race club merely facilitates the transaction.

3.16. In the absence of any underlying supply of goods or services in the given transaction when dealing with prize money, the levy of GST itself will not arise on the amount collected by the totalisator albeit temporarily. Presence of an entry in rate notification for goods and valuation mechanism for such activity will not be sufficient. It has been held by the Hon'ble Supreme Court[13] in various cases that the measure to which the rate of tax is to be applied to a taxable person must have a nexus to the taxable event. It is trite law that a subordinate legislature cannot create a levy which is not imposed by the parent legislation. It is important the subordinate legislation conform to the parent statute. Hence, in the absence of any transaction qualifying as supply, the levy imposed on such transaction is without any authority of law. Therefore, no GST implications should arise on transaction of exchange of actionable claims between punters.

4. POSSIBLY ADVERSE IMPACT OF PROHIBITIVE TAXATION

[13] State Rajasthan V. Rajasthan Chemists Association [(2006) 6 Scc 773; Mathuram Aggarwal V. State Of Madhya Pradesh [(1998) 8 Scc 667; Govinda Saran V. Commissioner Of Sales Tax (1985 Supp. Scc 205)

4.1. The proposed imposition of tax at a rate of 28% on the bet value of the amount bet on horse racing if finalized and implemented will inevitably lead to the following:

i. The respective State Governments where Horse racing and betting on horse racing is conducted in a regulated manner lose out substantially on the revenue that may be accrued slowly but surely as betting on Horse Racing will move from the regulated market into the unregulated market for want of improved winnings;

ii. Unregulated and illegal industries shall emerge, which will only provide criminal syndicates an avenue to garner and launder more money while cultivating a whole new sphere for such anti-social elements to thrive and effectively increase financial crimes. As per the recent study and investigation done by the Asian Racing Federation (Apex body of 27 racing countries including India), there are currently more than 1200 illegal bookmakers in Delhi alone. The proposal to impose 28% GST on the prize money will not only encourage illegal betting but eventually result in closure of the industry; and

iii. This rate of taxation will essentially become the highest in the world.

4.2. Apart from the potential revenue leakage that must be borne by State Governments, there is also the associated social cost of stimulating a criminal environment. It is pertinent to note that if such an unregulated market is allowed to grow, the effects it may have on the society is incapable of being quantified. The criminal syndicate(s) that may operate in an unregulated market has access and may generate manifold amounts of unregulated profits. These criminal elements will be able to streamline the flow of such illegal profits into various detrimental factions of society, such as but not restricted to match fixing, narcotics, fraud, money laundering, illegal drug production, prostitution, and various other criminal activities.

4.3. When Customers are confronted with a high rate of tax, they may seek out lower-cost alternatives such as engaging in tax-free black/ unregulated markets. A perfect example of the same is the lack of regulation of sports betting in India which stands in the way of a functioning legal market providing tax to the State Governments. This however does not mean that betting does not take place in India, it has merely pushed consumers to use 'grey' or unregulated channels which are still accessible *via* indirect channels.

4.4. If an appropriate rate of tax is imposed on commission rather than on face value of bets placed with the totalizator, it will lead to greater and larger number of players being

channeled into the regulated market. For example, in Greece, where tax is placed at 35% on the rake fee/commission, the channeling rate is 72%,. With a rate of tax of 28% on turnover/face value, it is unlikely that more than 30% of the punters, seeking to place bet, will bet through the regulated channel of totalisator.

4.5. Pre-GST the turnover of Indian turf clubs was Rs. 6000 crores, however post the imposition of GST, the turnover as fallen to Rs. 1500 crores. This does not mean that less people are betting, it only means that they are doing so in the unregulated and black market. Thus the loser of such shift are mainly three class of persons:

4.5.1. People whose livelihood depends on horse racing like the breeders, jockeys, stable hands, handlers, helpers amongst others;

4.5.2. The race clubs; and

4.5.3. Government of India.

4.6. **IT CANNOT BE STRESSED ENOUGH THAT UNLIKE OTHER FORMS OF GAMING THE RACE CLUBS ARE NON-PROFIT ENTITIES. THE LIVELIHOOD OF OVER 3.5 LAKH PEOPLE, BESIDES ANIMAL HUSBANDRY OF HORSES, DEPENDS SOLELY ON THE COMMISSION THAT THE RACE CLUBS GENERATE FROM TOTALISATOR BASED BETTING. IF A 28% TAX ON FACE VALUE OR PER TRANSACTION IS IMPOSED, THIS REVENUE WILL OF THE TURF CLUBS WILL DIE AND THE CLUBS WOULD BECOME REDUNDANT. IT IS A HUMBLE PLEA TO THE GROUP OF MINISTERS THAT JUST FOR A FEW CRORES OF REVENUE, THEY SHOULD NOT DESTROY THE EMPLOYMENT OF OVER 3.5 LAKH PEOPLE AND DESTROY THE TWO CENTURY OLD INSTITUTIONS OF HORSE RACING IN INDIA.**

In light of the above, we humbly request the GoM members' to:

(a) Reconsider the imposition of the highest slab of taxation @28% on face value, on the activity of totalisator based betting on horse racing. It is submitted that the incident of tax should be on the commission made by the race clubs;

(b) Align the mode of imposition of taxation to the mode prescribed by the Karnataka High Court in *Bangalore Turf Club Limited and Ors. Vs. Union of India* and consider taxing Turf Clubs on the commission raised as opposed to the imposition on face value, as the logical incidence of tax can only be the commission;

(c) Consider the activity of totalisator based betting on horse racing, as being inherently distinct from the activities of lottery, betting and gambling, as:

i) 'Betting and gambling' does not include betting on horse racing, as per judicial interpretation of the words, which are used in the constitutional entry 34 (state list), as well as in the Schedule III to the CGST Act 2017; and

ii) basis of horse racing is not commercial gain.

Yours sincerely,
On behalf of the Turf Authorities of India,

Turf Authorities of India

Deepak Sood
Secretary General

29 June 2022

Hon'ble Finance Minister,

Representation on GST on Online Gaming in reference to report of Group of Ministers (GOM) on Online Gaming

1. We write to you on behalf of ASSOCHAM AVGC National Council.
2. We draw inspiration from the vision our Hon'ble Prime Minister has on digital gaming that it has the potential to compete and win globally. AVGC Promotion Task Force and the subsequent vision set forth by the Hon'ble Prime Minister for the industry is a recognition of the government's clear intent to support the sector. The fast-growing online skill-based gaming platforms is example of the realisation of that vision.
3. To give a boost to the industry, the Central Government has initiated the process of introducing a national level regulatory framework for the online skill gaming industry, as it is critical to create a mechanism of clearly identifying online games as skill or chance. The mechanism is an attempt to ensure uniform rules derived from the principles laid down by the courts, along with the global best practices and a data-based approach to determine what constitutes games of skill and games of chance. Industry is actively engaged in this process.
4. The Online Skill Gaming industry was excited to be recognised by the Government of India for the potential it holds for India's Digital Economy. India is the largest emerging market in gaming with three billion annual gaming app downloads, and the world's fastest-growing mobile gaming market, as per KPMG. On average, gaming platforms recorded user growth of 60-70 percent. India has over 420 million gamers today, and that number is expected to grow at 47 percent by 2022. There are over 950+ gaming start-ups in the country, and the sector will be valued at $5 billion by 2025.This growth will further lead to revenue generation for the country, driven by ease of payment, increased smartphone penetration, regional language interfaces, better security etc.
5. Online Skill gaming industry, despite being in its infancy, has already been making significant contributions towards nation building by driving investments, innovation and building wealth for the economy. It is pertinent to note that the Online Skill Gaming industry has been contributing more than INR 10,000 Crores in direct and indirect taxes annually and has the potential to cumulatively contribute INR 40,000 Crores to the public exchequer between 2022

THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA
(CIN : U91990DL1920PLC008223)
4th Floor, Cultural Centre and Library Building, YMCA, 01 Jai Singh Road, New Delhi – 110 001
Tel.: +91-11-46550555 www.assocham.org E-mail: assocham@nic.in

and 2025. The industry also has the potential to create around 60,000 highly skilled jobs and attract over INR 20,000 Crores in FDI in the next few years, in addition to over INR 20,000 it has already attracted.

6. We're writing to you today to express our concerns around the recent media reports emerging ahead of the upcoming 47th GST Council meeting indicating that the GoM has recommended taxation on online gaming at 28% on the entire Contest Entry Amount. As submitted during our meeting, and in the multiple representations we've made earlier, taxing online gaming at 28% on the entire Contest Entry Amount (CEA) presents an existential risk for the industry and will completely derail its growth.

7. Madam, the proposed tax change, and application of GST on the Contest Entry Amount will lead to a situation where the applicable GST will around 15 times the current GST and will club constitutionally protected online skill games with betting and gambling, which is illegal in most parts of the county. This will derail the growth of this nascent industry and very likely lead to the demise of the industry. Any change from the status quo will significantly reduce the revenue for the companies, thereby making the business unviable. Online gaming is a sunrise sector, which is growing at a steady place and adding more revenue to the exchequer with every passing year.

8. It is our humble request to your goodself that the Government maintains the current practice of levying GST on platform fee or gross gaming revenue (GGR), as this tax regime has consistently proven to increase tax revenues for the government along with supporting the robust growth of industry.

Taxing the Online Gaming Industry on the entire CEA at 28% will result in loss of revenue for the exchequer, investments, and jobs:

9. We would like to humbly submit that changing the taxation structure for online gaming, as is being suggested in the media, will stifle the growth of a sunrise industry that has tremendous potential to transform India into a digitally empowered society. Such a move will also be detrimental to the vision of Hon'ble PM for online gaming and the AVGC ecosystem.

10. The proposed taxation structure also deters growth of Indian start-ups and entrepreneurs by creating an uneven playing field. At present, there are numerous foreign companies that are operating in India but not paying any taxes to the Government. Under the new taxation structure, foreign operators and illegitimate operators will emerge as an attractive alternative for the users, resulting in significant loss of revenue for the exchequer.

THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA
(CIN : U91990DL1920PLC008223)
4th Floor, Cultural Centre and Library Building, YMCA, 01 Jai Singh Road, New Delhi – 110 001
Tel.: +91-11-46550555 www.assocham.org E-mail: assocham@nic.in

11. Further, the proposed change in taxation structure will also increase instances of non-compliance, fueling the growth of the illegitimate grey market and resulting in revenue loss to the exchequer.

International Best Practices also point to taxation on Gross Gaming Revenue or Platform Fee only:

12. Both global and domestic learnings point towards a tax regime wherein Gross Gaming Revenue or Platform Fee are **key to plugging potential revenue leakage through shifting of business to the grey market and non-compliance.**

13. All leading international markets tax on GGR at a rate between ~7-20%. (Example: UK, US, Australia, Germany)

14. Markets which started taxing the prize pool instead of the GGR have reverted to taxing only GGR. (Example: UK, France)

15. Taxing on GGR instead of Prize Pool has been proven to increase tax revenues in the long term.

Learnings from earlier GST Council Discussions:

16. Further, learnings from GST Council Discussions (Source: 37th & 38th Agenda Note) also indicate that taxation on face value drives legitimate business to the grey market. It was further observed that the value of supply may be fixed as Gross Gaming Revenue which is Internationally Prevalent and that the tax rate may be suitably decided or rate applicable to be clarified.

The Online Skill Gaming industry strongly believes in the vision of the Hon'ble Prime Minister to make India a global hub of game development and services, we are committed to fulfilling the vision of the Hon'ble Prime Minister. However, a regressive tax structure will lead to destruction of this nascent industry in its infancy and encourage illegal domestic and offshore operators.

Madam, we would like to place the following facts about the online skill gaming industry for your kind consideration:

1. **Online Skill Games do not amount to 'gambling/ betting/ wagering' and is not a 'sin' industry:** Online Gaming includes both Games of Chance (which are legally recognised as gambling and betting activities) and Games of Skill (which are held to be legitimate business activities not amounting to gambling/ betting/ wagering by the Hon'ble Supreme Court and various high courts). The GoM appears to have taken a view different from the courts and

has treated the online skill gaming industry at par with other sin industries and recommended a higher tax structure than Casinos. It may be noted that as per Article 14 of the Constitution of India, unequals cannot be treated equally. Treatment of online skill gaming at par with gambling and betting industry is violative of the principles laid down in the Constitution.

2. **Business model of Online Skill Gaming industry is starkly different from that of Casinos or Lottery or any other gambling and betting activity:** Online Skill Gaming industry is a fully digital business and operates on wafer thin margins of 5% - 15% of the total Contest Entry Amount as platform fee and the rest is distributed back to the users completely as a prize pool. Additionally, it is important to note that the average ticket size for a majority of online skill games is between Rs 30 - Rs 40. The Online Skill Gaming industry caters to the entertainment needs of the common man.

   This is in stark contrast to the casino or the gambling industry where the stakes are high and the house participates in the prize pool. The gambling industry also operates on higher ticket sizes, majorly catering to a select group of affluent individuals with much higher purchasing power than the users of online skill gaming.

3. **Online Skill Gaming is fully digital and there is no scope for tax leakage:** It may be noted that unlike lottery, casinos and other gambling activities; online skill gaming is fully digital in nature, with 100% transactions processed digitally. All transactions on online skill gaming platforms are 100% traceable and made through legitimate banking channels. The concerns of tax authorities if any on tax leakage are completely unfounded.

We sincerely hope that the GST Council takes into consideration the above facts for deliberation. We also hope that the decision of the GST Council is not in stark contrast to the vision for the Gaming sector laid out by the government. A conducive view is likely to establish India as the hub of innovation and such policy measures would be in line with the dictum of the highest courts of the country. Gaming is the only sector where various other branches innovations of come together as a whole. Like AI, ML, Edge Computing , Web3 , Fintech , Metaverse , AR & VR, gamified learning & skilling even semiconductors & hardwares.

We further request that the GST council may consider deferring the decision of modifying the current GST regime till the Central Government introduces a national level framework for the online skill gaming industry. This is critically important to realise the dream of India becoming a global powerhouse in this domain through high skill employment to the young population of the country.

THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA
(CIN : U91990DL1920PLC008223)
4th Floor, Cultural Centre and Library Building, YMCA, 01 Jai Singh Road, New Delhi – 110 001
Tel.: +91-11-46550555 www.assocham.org E-mail: assocham@nic.in

We look forward to your kind support on the matter and we are open to participate in further consultations that the GST Council or the GoM may undertake before making a final decision.

With kind regards,

Deepak Sood

Smt. Nirmala Sitharaman
Chairperson of GST Council &
Hon'ble Minister of Finance
Ministry of Finance
Room No - 134, North Block
New Delhi 110001

CC:
Shri Rajeev Chandrasekhar
Hon'ble Minister of State
Ministry of Electronics and Information Technology
Government of India

Shri Alkesh Kumar Sharma
Secretary
Ministry of Electronics and Information Technology
Government of India

THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA
(CIN : U91990DL1920PLC008223)
4th Floor, Cultural Centre and Library Building, YMCA, 01 Jai Singh Road, New Delhi – 110 001
Tel.: +91-11-46550555 www.assocham.org E-mail: assocham@nic.in

Sustainability Empowerment Entrepreneurship Digitisation

2722689/2022
144

A&K | ALAGH & KAPOOR LAW OFFICES

Dated: 8th July 2022

Sri Vivek Johri
Hon'ble Chairman, Central Board of Indirect Taxes and Customs, and
Special Secretary to Government of India

Representation for clarity on valuation mechanism for online gaming sector for the purposes of charging GST

Respected Sir,

At the outset, the industry is thankful to the Hon'ble Finance Minister and the GST Council, for requesting the GoM to re-examine the issue of charging GST on the online gaming industry. The move shows that the Government wants to ensure that any changes made are not excessive to the extent to render the sector unviable. While, the GoM has recommended subjecting the online gaming sector to a uniform rate of 28 percent, it is unclear on what value such tax will be levied.

The E Gaming Federation (EGF), All India Gaming Federations (AIGF), Federation of Indian Fantasy Sports (FIFS) and Internet and Mobile Association of India (IAMAI) jointly represent the vast majority of Indian operators in the gaming space. We would like to like to humbly place the following for your kind consideration -

1. The gaming industry in India today generates Rs 15,000 Cr in annual revenues and is valued at Rs 1,50,000 Cr with over 100 operators. The industry contributes Rs 2,200 Cr annually in indirect taxes alone and is projected to contribute over Rs 6,000 Cr between 2023-2025. Recognizing the potential that the online gaming industry holds, the government has taken very constructive steps such as the announcement of the AVGC policy and creation of the inter-ministerial task force to regulate skill gaming.

2. The online gaming industry currently pays 18% GST on its platform fees, also commonly known as Gross Gaming Revenues (GGR). Typically, GGR for an operator is between 10-20% of contest entry amount (CEA). CEA is not operator revenue, and neither are player deposits which are held in escrow for player convenience. Accordingly, the same cannot be said to be consideration for supply of goods/services. The deposit made by the players is not a payment for a good or service. In fact, the same may be withdrawn or remain unused. An increase of GST from 18% to 28% on GGR is already a 55% increase in the tax rate. The industry may, at the expense of slower growth,

Having Office at A-12, LGF, Jangpura Extension, 110014
Email id: sonal.alagh@aklawoffices.in | Mobile No.: +91 78385 73750

ALAGH & KAPOOR LAW OFFICES

be able to absorb this higher tax rate but if the 28% was levied on deposits or CEA, this would render the entire gaming industry unviable.

3. Paying GST on GGR is in line with both what the Fitment Committee recommended in 2019 and global best practices. A snapshot of certain other countries who tax the consideration retained by the operators is mentioned hereunder:

Country	Tax levied on	Tax Rate
UK	GGR	21%
Germany	GGR	19%
US: Nevada	GGR	6.75%
Belgium	GGR	11%
Denmark	GGR	20%

4. The table below explains how the change in the rate and valuation will impact (a) Government/ tax economy (b) Industry and (c) the Consumers.

Valuation	GST Increase (in %)	Government impact	Industry impact	Consumer Impact
18% on GGR*	Nil	~Rs.16,000 Crore GST collection for FY'23-FY'25	38% CAGR of Revenue	Currently, operators absorb the tax burden for more than 20 Crore Indian gamers, who are projected to grow to more than 40 Crore by FY'25
28% on GGR*	~55%	Higher tax revenue	Will slow down industry growth but not make it unviable. Operators will pay the additional tax burden from their revenues	No impact as operators will pay the additional tax burden

ALAGH & KAPOOR LAW OFFICES

28% on Net Deposits **(Deposits-Withdrawals)**	~55%	Higher tax revenue	Will slow down industry growth but not make it unviable. Operators will pay the additional tax burden from their revenues	No impact as operators will pay the additional tax burden
28% on Deposits	300%	Decrease in tax revenue	Makes the whole $20B Indian skill gaming industry unviable	a. The additional 28% tax will have to be passed on entirely to the players, whose winning pool will decrease substantially and also the number of games that a user will be able to play will reduce to about 50%. b. Players will not bear this cost on account of GST and instead might move to the grey market

Having Office at A-12, LGF, Jangpura Extension, 110014
Email id: sonal.alagh@aklawoffices.in | Mobile No.: +91 78385 73750

As per the Explanatory Notes to the scheme of classification of services under GST, the service code 998439 (under the main heading 9984) is described as follows:

998439 Other on-line content n.e.c

This service code includes games that are intended to be played on the Internet such as roleplaying games (RPGs), strategy games, action games, card games, children's games...

Note: Payment may be by subscription, membership fee, pay-per-play or pay-per- view.

This service code does not include:

.....

Online gambling services, cf.999692

.....

From the explanatory notes, it can be seen that all online skill-based games, except online gambling games, are covered under the heading 9984.

Given that online game of skills do not fall under the category of 'gambling', the platform services operators predominantly consider their services to be covered under the heading 9984, which is currently taxed under GST at 18%.

Relevant valuation Rule applicable to chance-based games/ activities such as lottery, betting, gambling, and horse racing may not be applicable to online skilled based gaming platforms

For supplies specified in Rule 31A of the CGST Rules, the taxable value of service shall be 100% of the face value of the bet. Supplies specified in Rule 31A include betting, gambling, or horse racing.

The term 'betting' or 'gambling' has not been defined under the GST law. However, the term 'betting or gambling' has been defined in Section 65B(15) of the Finance Act 1994 to "means 'putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring".

Further, the meaning of the terms 'betting' and 'gambling' has been provided in the case of M/s. Junglee Games India Pvt. Ltd. v. State of Tamil Nadu[1]. The Madras High Court has held that these terms in Entry 34 of the Second List of Schedule 7 in the Constitution of India are limited to betting on activities based on chance only. In addition, the Karnataka High Court in the case of All India Gaming Federation vs. The State of Karnataka & Ors[2], has also defined the terms 'betting' and 'gambling' as confined to games of chance.

The definition of betting and gambling and the judicial interpretation given to these terms seems to restrict its applicability to cases where the winnings are merely on the occurrence of a chance or accident (i.e., game of chance). Given the above, Rule 31A of the CGST Rules, which is applicable to lottery, betting, gambling, and horse racing, may not be made applicable to online skill-based gaming platforms.

1 - M/s. Junglee Games India Pvt. Ltd. v. State of Tamil Nadu (2021) SCC OnLine Mad 2762
2 - All India Gaming Federation vs The State of Karnataka & Ors WP 18703/2021

Tabulated below are the tax positions adopted by online skill-based gaming platforms

Sr. No.	Valuation Base	Whether taxable under GST	Remarks
1	Money deposited with the platform	✗	▸ The money deposited by the participants to the wallet qualifies as a transaction in money (since the money has been only deposited in the wallet and has not yet been used by the participant to play any game/avail service of the platform) . This amount would remain as that of the participant. ▸ Further, it is in the nature of an 'actionable claim'. ▸ Schedule III of the Central Goods and Services Tax Act ('CGST Act') provides that "actionable claims, other than lottery, betting and gambling" shall be treated neither as a Supply of Goods nor a Supply of Services. ▸ Levy of tax on the money deposited in the wallet is against the basic principle of the GST law.
2	Contribution to the prize pool	✗	▸ The contributions made by the participants to the prize pool is in the nature of an 'actionable claim', as the same is to be distributed amongst the winning participating members as per the outcome of a game. ▸ Schedule III of the Central Goods and Services Tax Act ('CGST Act') provides that "actionable claims, other than lottery, betting and gambling" shall be treated neither as a Supply of Goods nor a Supply of Services.
3	Platform fee	✓	▸ Online skill-based gaming operators are providing platform services to the users playing games on their platform. ▸ The consideration for such services is represented by the platform fee/ GGR earned by the operators for facilitating/providing platform for the gameplay. ▸ Since this is the actual fee charged by the gaming companies for providing the platform, this is most appropriate base valuation to levy tax.
4	Distribution of prize money	✗	▸ Mere distribution of prize money qualifies as transaction in money (since there is no element of service in it per se) ▸ Thus, no GST is leviable on such distributed amount.

Proposal to levy GST on entire contest entry amount may increase GST by 10 to 20 times

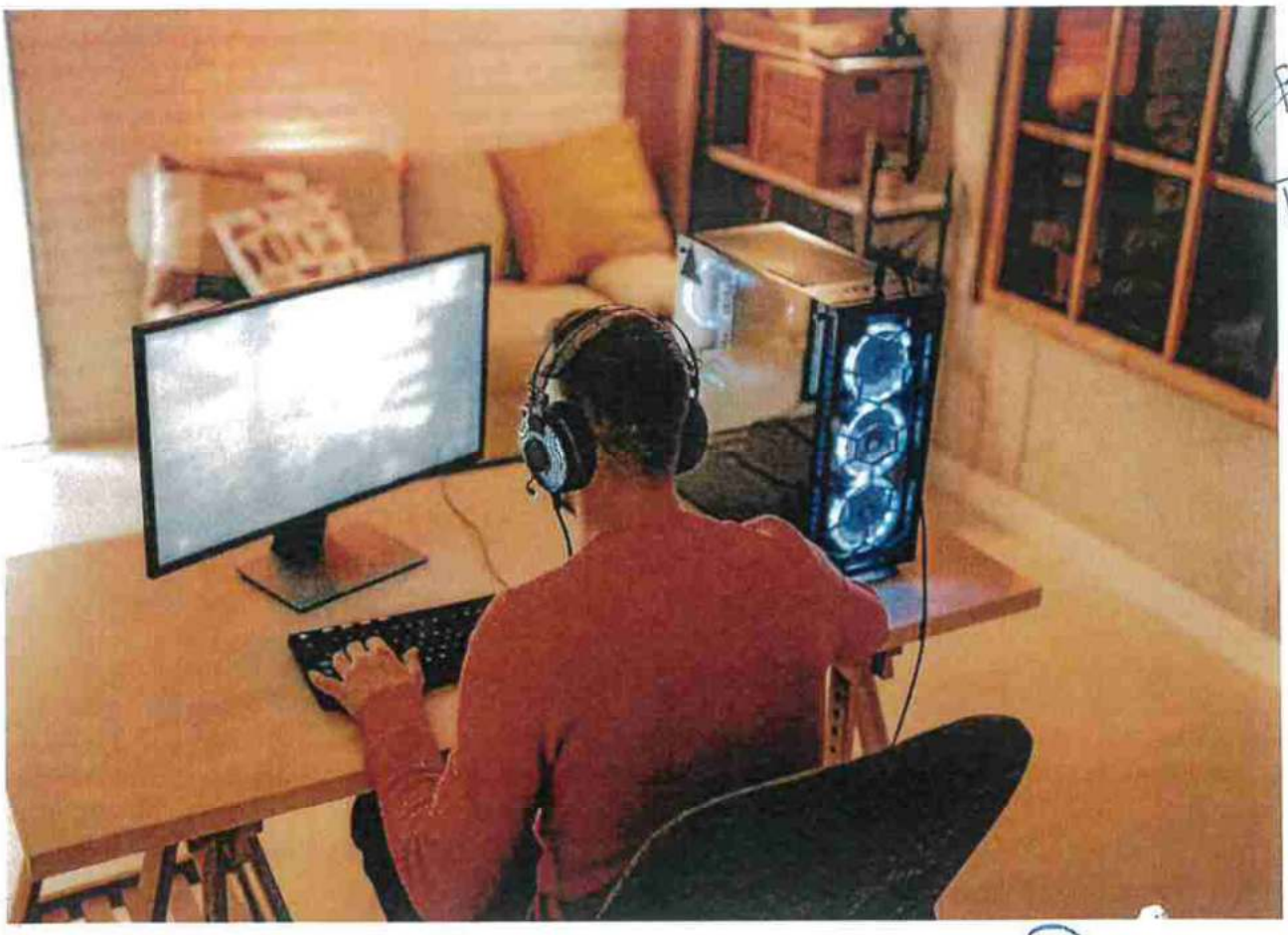
The industry is receiving consideration in the form of platform fee/ GGR for providing infrastructure access to players and their fee/ consideration is restricted to a predetermined percentage of entry fee paid for the game being played by players (the consideration mechanism is very similar to any other technology-based platform).

The remaining component (i.e., contest entry amount minus the platform fees) is the player's contribution to the prize pool. This prize pool is distributed to the winners and the online gaming companies have no right over such amount as the gaming company only holds the money in a separate independent/trust account as a custodian. The foundation and concept of the GST law in India is to levy tax on the supply of goods or services or both for which consideration is received by the supplier in respect of the supply of goods or services (excl. exceptional cases specifically mentioned in the GST legislation). In the case of online skill-based gaming industry, the consideration earned is in the form of platform fees/ GGR which is offered to GST. Thus, the online skill-based gaming industry is of the view that levying GST on the amount which is not a consideration for the skill-based gaming operator companies would be contrary to the provisions of the GST legislation.

Though the change in GST rate from 18% to 28% is in itself an increase of 56% from the current rate, the change in valuation methodology may impact the complete industry and the industry is of the opinion that the business operations may find it difficult to survive with such high taxation. Further, the increase in tax payout may be by 10 to 20 times for the industry. The same has been illustrated by way of an example below:

Sr. No.	Particulars	If the platform fee is 15%			If the platform fee is 7%		
		Current Position (GST @18% on platform fee)	Proposed Change (GST @28% on platform fee)	Proposed Change (GST @28% on stakes)	Current Position (GST @18% on platform fee)	Proposed Change (GST @28% on platform fee)	Proposed Change (GST @28% on stakes)
A	Contribution to the pool	100	100	100	100	100	100
B	Platform fee	15	15	15	7	7	7
C	GST	2.7	4.2	28	1.26	1.96	28
D	% Increase in GST from current position	-	56%	937%	-	56%	2,122%
E	Effective rate of tax as a % of gross revenue of industry (C/B)	18%	28%	187%	18%	28%	400%

Further, from the above illustration, it appears that in case of the proposed tax structure of levying GST on contest entry amount, the GST payout could be as high as four times of gross revenue earned by industry.



Players may be required to pay three to four times more money per game

Online gaming has emerged as a mainstream entertainment and has constantly challenged the traditional entertainment sources. If the GoM considers taxation on the entire contest entry amount, the cost per game for the players may increase by three to four times.

We have highlighted the same in the below illustration, keeping the entry fee and platform fee/ GGR constant:

Scenario 1: GST on platform fee @18% (Current position)

Sr. No.	Particulars	Game 1 Won	Game 2 Lose	Game 3 Won	Game 4 Lose
A	Opening balance in the wallet	200	276	176	253
B	Entry fee	100	100	100	100
C	Platform fee	10	10	10	10
D	GST	1.80	1.80	1.80	1.80
E	Money won [(B-C-D)*2]	176		176	
F	Closing balance in the wallet [A-B-C-D+E]	276	176	253	153

Cost per game for the player = INR 11.80
[(200-153)/4]

Scenario 2: GST on platform fee @28%

Sr. No.	Particulars	Game 1 Won	Game 2 Lose	Game 3 Won	Game 4 Loss
A	Opening balance in the wallet	200	274	174	249
B	Entry fee	100	100	100	100
C	Platform fee	10	10	10	10
D	GST	2.8	2.8	2.8	2.8
E	Money won [(B-C-D)*2]	174		174	
F	Closing balance in the wallet [A-B-C-D+E]	274	174	249	149

Cost per game for the player = INR 12.80
[(200-149)/4]

Scenario 3: GST on deposits @28%

Sr. No.	Particulars	Game 1 Won	Game 2 Lose	Game 3 Won	Game 4 Lose
A	Money deposited in the wallet	200	-	-	
B	GST	44	-	-	
C	Opening balance in the wallet	156	236	136	216
D	Entry fee	100	100	100	100
E	Platform fee	10	10	10	10
F	Money won [(C-D-E)*2]	180		180	
G	Closing balance in the wallet [C-D-E+F]	236	136	216	116

Cost per game for the player = INR 17.29
[(200-116)/4]

Scenario 4: GST on complete stake @28%

Sr. No.	Particulars	Game 1 Won	Game 2 Lose	Game 3 Won	Game 4 Lose
A	Opening balance in the wallet	200	224	124	148
B	Entry fee	100	100	100	100
C	Platform fee	10	10	10	10
D	GST	28	28	28	28
E	Money won [(B-C-D)*2]	124		124	
F	Closing balance in the wallet [A-B-C-D+E]	224	124	148	48

Cost per game for the player = INR 38.00
[(200-48)/4]

From the above illustration, it may be observed that the cost per game for a player could increase by three to four times (i.e., from INR 12 to INR 38 in above illustration) if the GST is levied on the contest entry amount value at 28%.

As the incidence of tax is increasing significantly, the ability to play games at a per user level could decrease at a faster pace (i.e., from 10 to 4 games as per the above example) and industry believes that the inclination of users continuing to engage on the platform could eventually decline.

Appropriate taxation leads to favorable channeling rate

Besides the proposed levy of tax at 28% on contest entry amount, 30% income tax is also charged on winnings of the participants, making the effective rate of taxation on online gaming between 45-50% on contest entry amount.

Global studies[3] have suggested that an appropriate rate of taxation leads to a favorable channeling rate, i.e., the proportion of gaming that consumers conduct through domestically channel license (i.e., regulated sector). Studies further suggested that with a higher rate of taxes, gaming operators as well as consumers would choose not to join the licensed or regulated system. The Fitment Committee has also recommended GST on GGR as it is the most prevalent practice internationally.[4]

Therefore, the industry apprehends that a higher tax slab for online gaming could lead to proliferation of a parallel unregulated non-compliant market and there is a risk that the growth of legitimate and legally compliant companies may stifle.

Further industry also apprehends that while the customers may be attracted toward such economical, inexpensive, and innovative modes of game play, they could be easily defrauded with minimal respite against the economic frauds. Given this, consumer protection may be at risk and open the door for other illegal businesses.

Further, industry believes that a higher taxation may benefit the offshore gaming companies, who may not be India GST compliant and outside the purview of the regulatory oversight. In their belief, this will benefit the eco-system of offshore gaming companies in other jurisdictions at the cost of domestic regulated companies. In addition, the Indian ecosystem will lose the potential foreign investments in the sector and the ability to contribute to the domestic employment.

Unique features of online skill-based gaming

- Online skill-based gaming operators are primarily providing technology solutions to users - In online skill-based gaming, the operators provide a technology-based platform to support and enable user interface. The services provided by the gaming operators through this technology platform are key to the entire online skill-based gaming ecosystem. Thus, the services provided by online gaming operators are more in the nature of a technological solution, wherein they make available a platform for users from different landscapes and assist in facilitating the games.
- Online skill-based gaming operators are charging fixed considerations - The skill-based gaming companies earn revenue by charging a platform fee/ GGR to the players for using their platform. The fee charged is not depended on the outcome of the game. This is indeed the revenue earned by the company. Moreover, huge amounts are spent by the gaming companies in research and development and designing of their platform to make it user friendly, which further substantiates the fact that this is a technological product.
- Online skill-based gaming operators are not participating in any games - As per business model of online skill-based gaming industry, companies are only providing the platform and infrastructure to users and users are engaging with each other. Such gaming companies are not participating in such games and companies are charging for providing such platform and infrastructure. Whatever money is contributed to the pool is re-distributed to the winner and is subject to Income Tax as per the provisions of the Income tax legislation, in the hands of the players. The user's contribution toward prize pool collection is in a separate independent bank/trust account and completely distributed to winners.

3 - https://www.eqba.eu/uploads/2020/06/Tax-analysis-Denmark.pdf and copenhagen-economics-2016-licensing-system-for-online-gambling.pdf (copenhageneconomics.com)
4- https://gstcouncil.gov.in/sites/default/files/Agenda/37-meeting/Detailed Agenda Note - 37th GSTCM - Volume 3.pdf
Agenda for 37th GST Council Meeting Volume - 3, Annexure V, Sl. No. 4

- Active participation from users - The online skill games (such as rummy, poker, fantasy sports, etc.) involve active participation and/ or interaction among users with primary focus on entertainment value. The players constantly engage with one another, apply skills, and use their knowledge while playing the game.
- Legal (Supreme Court and High Courts) position on skill-based gaming - The Supreme Court and various high courts have analyzed the various aspects in detail and held that some of the popular games such as rummy, fantasy sports, poker etc., qualify as game of skill since it requires a person to learn, adapt and improvise on the nuances of the game. The same is as under:

Online skill-based gaming category	Citation	Judicial principle
Rummy	State of Andhra Pradesh vs K. Satyanarayana & Ors (1968 AIR 825, 1968 SCR (2) 387)	The Supreme Court held that rummy is mainly and predominantly a game of skill.
	Dr. K. R. Lakshmanan vs State of Tamil Nadu and ANR (1996 AIR 1153, 1996 SCC (2) 226)	The Supreme Court confirmed rummy to be a game of mere skill.
Poker	Indian Poker Association & Anr vs State of West Bengal & Ors (W.P.A. No. 394 of 2019) (Calcutta High Court)	High Court held that playing poker does not amount to gambling as it is not included in the definition of "gaming or gambling" under section 2(1)(b) of West Bengal Gambling and Prize Competition Act, 1957.
	Indian Poker Association (IPA) vs The State of Karnataka (WP 39167/2013) (Karnataka High Court)	HC: Poker is a game of skill and does not require any licence to engage in the activity of providing an avenue for its members for the purpose of recreation.
Fantasy Sports Games ('FS')	Avinash Mehrotra v. State of Rajasthan SLP Diary No(s) 18478/2020	The Supreme Court dismissed an appeal against this High Court judgement.
	Varun Gumber vs Union Territory, Chandigarh & ORS CWP No. 7559/2017 (Punjab and Haryana High Court)	FS format involves a substantial degree of skill, thereby classifying it as a 'game of skill'. The Supreme Court dismissed an appeal against this High Court judgement.
	Ravindra Singh Chaudhary vs UOI, 2020(42) G.S.T.L. 195 (Rajasthan High Court)	The High Court held that games offered by FS does not amount to betting as held by the Supreme Court

- Current GST law also makes distinction between online gaming and betting and gambling. - Present GST law also recognizes online gaming separately under the rate notification, while separate valuation and GST rate entry have been notified for betting and gambling including horse racing.

Tabulated below are the key differences between the 'game of skill' and "game of chance' as highlighted by courts in various judgments:

Game of skill

- Players invest time in learning, practicing and honing skills.
- Success of the game depends principally on superior knowledge of the game, training, attention, experience of the player.
- Skills have to be a predominant element in the game

Game of chance

- Outcome of the game depends on factors like luck and unpredictability.
- Mostly, the results are uncertain.
- A game of chance is considered as gambling

AVGC sector has potential to become the torch bearer of "Create in India" and "Brand India"

As per the Press Information Bureau released on 8 April 2022, the Animation, Visual Effects, Gaming and Comic (AVGC) sector in India has the potential to become the torchbearer of "Create in India" and "Brand India". India has the potential to capture 5% (~$40 billion) of the global market share by the year 2025, with an annual growth of around 25-30% and creating over 1,60,000 new jobs annually.

As per industry estimates, India has over 500 gaming companies. The industry has provided employment to thousands of people and has also witnessed Foreign Direct Investment (FDI) inflow of ~US$2.7 billion (over ~INR 20,000 crore).

Further, as per industry estimate, the global online gaming market is estimated to grow from US$38 billion in 2019 to US$122 billion by 2025. On similar lines, the India online /real money gaming industry is expected to grow from US$2 billion (INR 15,000 crores) in 2022 to over US$ 5.4 billion (INR 40,000 crores) in 2025. Currently, India constitutes only 1% of the global gaming industry as compared to the US (23%) and China (25%) demonstrating a huge growth potential.

Further, online skill gamers in India are estimated to grow from over 20 crores in 2022 to over 40 crores in 2025. Of these, an estimated 70% are mobile gamers growing at 38% CAGR.

Given the above events, India has the potential to become the new gaming hub of the world, leveraging the domestic startup ecosystem being facilitated by the government. Further, the Government of India had launched "Digital India", a flagship program with a vision to transform India into a digitally empowered society and knowledge economy. Online skill-based gaming is enhancing and contributing towards the government's digital agenda by digitizing transactions in the online gaming sector.

Therefore, the industry believes that higher taxation may reduce the attractiveness of online skill-based gaming industry and could impact FDI inflows, existing employment as well as future employment opportunities, investment in marketing and IT services, ancillary industries, etc.

Industry is contributing a significant amount to exchequer

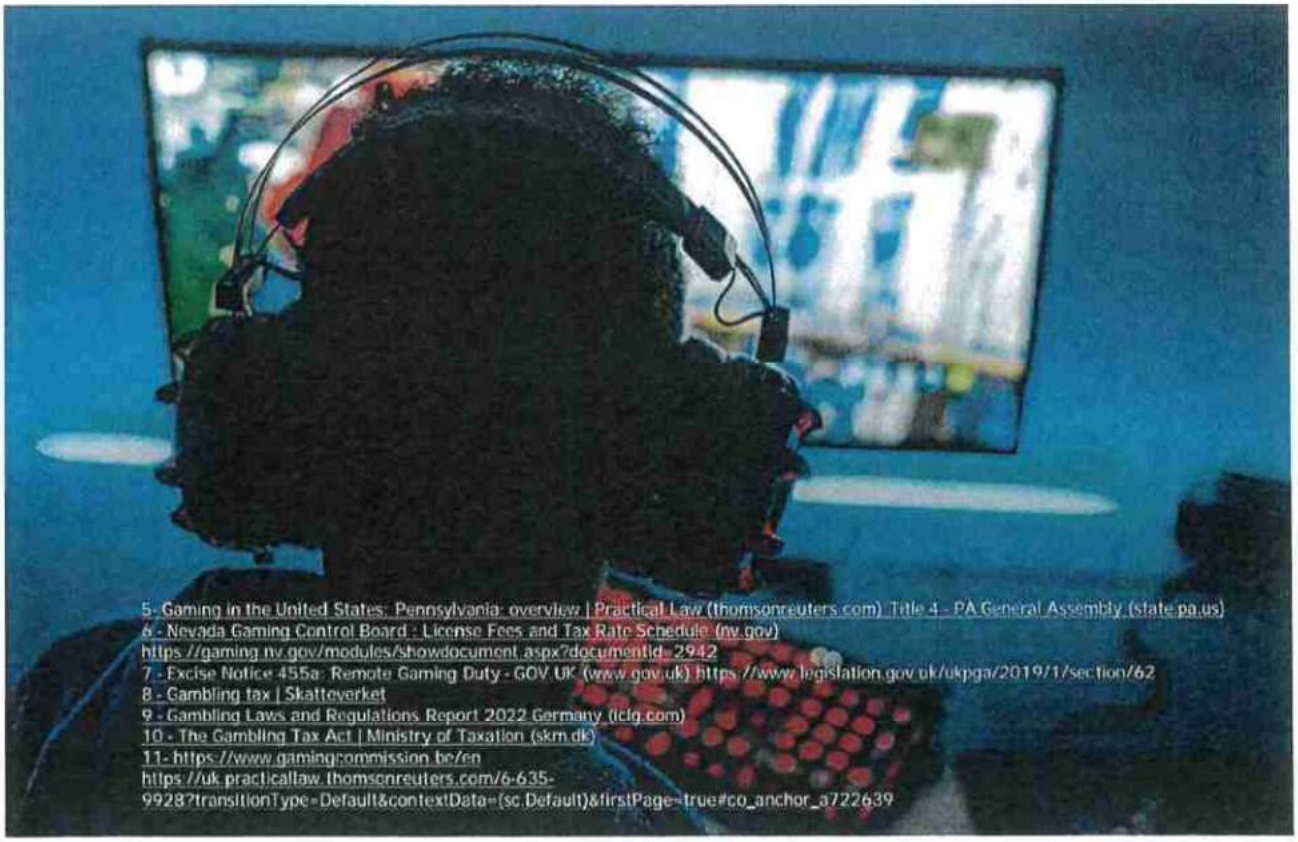
As per industry estimates, at present, the industry is contributing more than INR 2,200 crores of GST in 2022. By increasing the tax rate from 18% to 28% on GGR/platform fee, the industry may contribute higher revenue to the exchequer. Apart from GST, winnings from the online games are taxable at 30% as per Income Tax laws in India. Therefore, industry is contributing a significant amount to exchequer.

Internationally, most countries levy tax on platform fee/ GGR earned by online skill-based gaming operators

Analysis of international laws of the various countries where online gaming is popular indicates that largely taxes are levied on the platform fee/ GGR earned by the gaming companies.

Sr. No.	Country	Tax Base	Tax Rate
1	US: Pennsylvania	GGR / Platform fee	Online table games (including poker) - 14%[5]. Fantasy sports - 15%
2	US: Nevada	GGR / Platform fee	6.75%[6]
3	UK	GGR / Platform fee	21%[7]
4	Sweden	GGR / Platform fee	18%[8]
5	Germany	GGR / Platform fee	19%[9]
6	Denmark	GGR / Platform fee	20%[10]
7	Belgium	GGR / Platform fee	11%[11]

The growth and contribution of this industry in India can only be made possible with the right taxation framework and regulatory support to the domestic market. Deviating from international best practices may not be fruitful to the stakeholders and only drive the domestic players away.



5- Gaming in the United States: Pennsylvania: overview | Practical Law (thomsonreuters.com) Title 4 - PA General Assembly (state.pa.us)
6 - Nevada Gaming Control Board : License Fees and Tax Rate Schedule (nv.gov)
https://gaming.nv.gov/modules/showdocument.aspx?documentid=2942
7 - Excise Notice 455a: Remote Gaming Duty - GOV.UK (www.gov.uk) https://www.legislation.gov.uk/ukpga/2019/1/section/62
8 - Gambling tax | Skatteverket
9 - Gambling Laws and Regulations Report 2022 Germany (iclg.com)
10 - The Gambling Tax Act | Ministry of Taxation (skm.dk)
11- https://www.gamingcommission.be/en
https://uk.practicallaw.thomsonreuters.com/6-635-9928?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a722639

Conclusion

Considering the market size and future growth projections, the online skill-based gaming industry is expected to be a significant contributor to furtherance of the Indian startup ecosystem through on various counts such as FDI inflows, employment, investment in marketing and IT services, ancillary industries (such as data centers and cloud services) etc. This sector could also help in facilitating the GoI's vision for the AVGC sector and encourage the domestic players rather than driving users to foreign companies/ offshore platforms; thereby enhancing government's revenue collection.

Therefore, the right tax structure for this industry could drive tax revenues, provide impetus to new technology-based startups, and positively impact overall industry at large and safe playing environment to the consumers. The crystallization of the GST valuation mechanism could be a catalyst in enabling ease of doing business and spur growth of this rising sector.

2722689/2022

156

ALAGH & KAPOOR LAW OFFICES

Dated: 8th July 2022

Sri Vivek Johri
Hon'ble Chairman, Central Board of Indirect Taxes and Customs, and
Special Secretary to Government of India

Representation for clarity on valuation mechanism for online gaming sector for the purposes of charging GST

Respected Sir,

At the outset, the industry is thankful to the Hon'ble Finance Minister and the GST Council, for requesting the GoM to re-examine the issue of charging GST on the online gaming industry. The move shows that the Government wants to ensure that any changes made are not excessive to the extent to render the sector unviable. While, the GoM has recommended subjecting the online gaming sector to a uniform rate of 28 percent, it is unclear on what value such tax will be levied.

The E Gaming Federation (EGF), All India Gaming Federations (AIGF), Federation of Indian Fantasy Sports (FIFS) and Internet and Mobile Association of India (IAMAI) jointly represent the vast majority of Indian operators in the gaming space. We would like to like to humbly place the following for your kind consideration -

1. The gaming industry in India today generates Rs 15,000 Cr in annual revenues and is valued at Rs 1,50,000 Cr with over 100 operators. The industry contributes Rs 2,200 Cr annually in indirect taxes alone and is projected to contribute over Rs 6,000 Cr between 2023-2025. Recognizing the potential that the online gaming industry holds, the government has taken very constructive steps such as the announcement of the AVGC policy and creation of the inter-ministerial task force to regulate skill gaming.

2. The online gaming industry currently pays 18% GST on its platform fees, also commonly known as Gross Gaming Revenues (GGR). Typically, GGR for an operator is between 10-20% of contest entry amount (CEA). CEA is not operator revenue, and neither are player deposits which are held in escrow for player convenience. Accordingly, the same cannot be said to be consideration for supply of goods/services. The deposit made by the players is not a payment for a good or service. In fact, the same may be withdrawn or remain unused. An increase of GST from 18% to 28% on GGR is already a 55% increase in the tax rate. The industry may, at the expense of slower growth,

Having Office at A-12, LGF, Jangpura Extension, 110014
Email id: sonal.alagh@aklawoffices.in | Mobile No.: +91 78385 73750

ALAGH & KAPOOR LAW OFFICES

be able to absorb this higher tax rate but if the 28% was levied on deposits or CBA, this would render the entire gaming industry unviable.

3. Paying GST on GGR is in line with both what the Fitment Committee recommended in 2019 and global best practices. A snapshot of certain other countries who tax the consideration retained by the operators is mentioned hereunder:

Country	Tax levied on	Tax Rate
UK	GGR	21%
Germany	GGR	19%
US: Nevada	GGR	6.75%
Belgium	GGR	11%
Denmark	GGR	20%

4. The table below explains how the change in the rate and valuation will impact (a) Government/ tax economy (b) Industry and (c) the Consumers.

Valuation	GST Increase (in %)	Government impact	Industry impact	Consumer Impact
18% on GGR*	Nil	~Rs.16,000 Crore GST collection for FY'23-FY'25	38% CAGR of Revenue	Currently, operators absorb the tax burden for more than 20 Crore Indian gamers, who are projected to grow to more than 40 Crore by FY'25
28% on GGR*	~55%	Higher tax revenue	Will slow down industry growth but not make it unviable. Operators will pay the additional tax burden from their revenues	No impact as operators will pay the additional tax burden

ALAGH & KAPOOR LAW OFFICES

28% on Net Deposits **(Deposits-Withdrawals)**	~55%	Higher tax revenue	Will slow down industry growth but not make it unviable. Operators will pay the additional tax burden from their revenues	No impact as operators will pay the additional tax burden
28% on Deposits	300%	Decrease in tax revenue	Makes the whole $20B Indian skill gaming industry unviable	a. The additional 28% tax will have to be passed on entirely to the players, whose winning pool will decrease substantially and also the number of games that a user will be able to play will reduce to about 50%. b. Players will not bear this cost on account of GST and instead might move to the grey market

Having Office at A-12, LGF, Jangpura Extension, 110014
Email id: sonal.alavh@aklawoffices.in | Mobile No.: +91 78385 73750

ALAGH & KAPOOR LAW OFFICES

28% on Contest Entry Fee	1,100%	Decrease in tax revenue	Makes the whole $20B Indian skill gaming industry unviable	a. The additional 28% tax will have to be passed on entirely to the players every single time they play, who will lose substantially even before they play their first game. b. Players will not bear this cost and instead might move to offshore illegal platforms that don't pay taxes

GST Impact on the Indian economy

5. As is evident from the above table, GST levied on deposits or CEA will leave an operator with no choice but to pass on this tax entirely to the user, as the industry will not be able to absorb the exponential increase in tax cost. It is also relevant to note that most of the companies in the online gaming industry are start-ups, none of these companies will be able to survive the application of GST on deposits or CEA, since the user base is likely to shift to grey market.

6. There are certain factors due to which, the online gaming industry is booming in India. These factors include growing younger population, higher disposable income, inexpensive internet data, increasing number of smartphone and tablet users, so the online gaming industry is the inevitable reality of today. The user, who is already required to pay full income tax on gross winnings will be unable to bear such a large increase in cost and will shift to black market operators to avoid the increase in playing costs and reduction in winning pool. As global experience has shown, such activities on the internet are hard to control without regulation and legalization of a domestic industry. In addition to this we estimate that thousands of jobs will be lost and hundreds of millions of dollars in value created by Indian entrepreneurs destroyed. The biggest beneficiary of such a change in the tax regime will be black market operators, and specifically offshore operators, resulting in substantial tax loss to the government.

ALAGH & KAPOOR LAW OFFICES

7. With the actions taken by the Government – constitution of AVGC taskforce, MeitY expressing its intention to regulate the gaming industry, allowing 100% FDI etc., India is being viewed as a favorable jurisdiction for the online gaming industry. Further, the judiciary has also instilled confidence by recognizing the distinction between game of skill and game of chance. However, if GST at the rate of 28% is to be levied on the entire participant contribution or deposit fee, then it will mar the budding investor confidence and be a counter- productive measure.

Online Gaming Industry Prayer:

1. 28% on GGR (Gross Gaming Revenue) will be the best approach that ensures:

   a. Significant growth of GST revenue to the exchequer; 55% increase in GST may lead to increase in overall projected cumulative GST collections from Rs 16,000 Crores to revised projection of Rs 25,000 crores between FY'23 - FY'25;
   b. The online skill gaming industry's viability and enabling the industry to attract further investments to sustain the growth;
   c. Protection for the existing 20 Crore+ Indian gamers (which are expected to go up to 40Crore by 2025) by enabling platforms to absorb additional tax burden without passing it on to Indian consumers;

2. Prevent leakage of tax revenues due to transfer of business from legitimate platforms to illegitimate offshore and grey market operators (nil revenue to exchequer from direct and indirect tax) due to exponential increase of over 1,100% in GST as proposed by the GoM.

The Indian gaming industry is committed to drive the Prime Minister's vision on AVGC, which was announced by the Hon'ble FM in Budget 2022 towards success. We remain committed to engaging and building dialogue on this critical issue and hope that you will consider the representation favourably. We would request an urgent meeting to explain our submission and discuss the related issues.

With Kind Regards,
Sonal Alagh

Partner
Alagh & Kapoor Law Offices

CC: Hon'ble Finance Minister, Government of India
CC: Hon'ble Members of Group of Ministers

Having Office at A-12, LGF, Jangpura Extension, 110014
Email id: sonal.alagh@aklawoffices.in | Mobile No.: +91 78385 73750

FICCI

Azadi Ka Amrit Mahotsav

Federation of Indian Chambers of Commerce and Industry
Federation House
Tansen Marg
New Delhi 110001
T +91 11 2335 7364
F +91 11 2332 9369
E arun.chawla@ficci.com
www.ficci.in
CIN: U99999DL1956NPL002635
ISO 9001 : 2015 Certified

Dy. No. 2709017 /MPS/2022
Dated 30/06/2022

Arun Chawla
Director General

OFFICE OF THE FINANCE MINISTER
29 JUN 2022
RECEIVED

Rev Secy
30/6
PS to FM

June 28, 2022

Smt. Nirmala Sitharaman
Minister of Finance
Government of India

Hon'ble Minister,

Request for continuation of existing GST tax regime for Online Gaming Industry, reference to media reports on GST GoM on Online Gaming recommendations

At the outset, we thank you for your valuable time to meet key industry leaders/members of FICCI Gaming Committee on 23rd June, 2022 and providing us with an opportunity to submit our representation on behalf of the Online Skill Gaming industry for your kind consideration.

As a preliminary response, we crave to submit that the Council must take into consideration the vision of the Hon'ble Prime Minister of India in propagating the internet and internet-based innovation and industry. The mushrooming of internet linked skill-based gaming platforms is one such glaring example of the realisation of the vision of the Hon'ble Prime Minister.

It may also be pertinent to mention there that pressing immediacy to recognise the potential of the skill-based gaming sector has been shown by the Hon'ble Minister for Information Technology after the constitutional courts have unanimously approved the same. May we also humbly submit that the Skill-Based Gaming models are entirely discernible from the games purely operating on Games of Chance factors. In that regard, MEITY is taking active measures to adopt a framework which would specifically classify and regulate the skill-based gaming arena and ecosystem.

The Online Skill Gaming industry was excited to be recognised by the Government of India for the potential it holds for India's Digital Economy. The recent budget announcement of setting up of the AVGC Promotion Task Force and the subsequent vision set forth by the Hon'ble Prime Minister for the industry is a recognition of the industry's true economic potential.

Online Skill gaming industry, despite being in its infancy, has already been making significant contributions towards nation building by driving investments, innovation and building wealth for

the economy. **It is pertinent to note that the Online Skill Gaming industry has been contributing more than INR 10,000 Crores in direct and indirect taxes annually, and has the potential to cumulatively contribute INR 40,000 Crores to the public exchequer between 2022 and 2025. The industry also has the potential to create around 60,000 highly skilled jobs and attract over INR 20,000 Crores in FDI in the next few years, in addition to over INR 20,000 crores it has already attracted.**

We are writing to you today to express our concerns around the recent media reports emerging ahead of the upcoming 47th GST Council meeting indicating that the GoM has recommended taxation on online gaming at 28% on the entire Contest Entry Amount. As submitted during our meeting, and in the multiple representations we've made earlier, taxing online gaming at 28% on the entire Contest Entry Amount (CEA) presents an existential risk for the industry and will completely derail its growth.

Taxing the Online Gaming Industry on the entire CEA at 28% will result in loss of revenue for the exchequer, investments and jobs:

- We would like to humbly submit that changing the taxation structure for online gaming, as is being suggested in the media, will stifle the growth of a sunrise industry that has tremendous potential to transform India into a digitally empowered society. Such a move will also be detrimental to the vision of Hon'ble PM for online gaming and the AVGC ecosystem.

- The proposed taxation structure also deters growth of Indian startups and entrepreneurs by creating an uneven playing field. At present, there are numerous foriegn companies that are operating in India but not paying any taxes to the Government. Under the new taxation structure, foreign operators and illegitimate operators will emerge as an attractive alternative for the users, resulting in significant loss of revenue for the exchequer.

- Further, the proposed change in taxation structure will also increase instances of non-compliance, fueling the growth of the illegitimate grey market and resulting in revenue loss to the exchequer.

International Best Practices also point to taxation on Gross Gaming Revenue or Platform Fee only:

- Both global and domestic learnings point towards a tax regime wherein Gross Gaming Revenue or Platform Fee are **key to plugging potential revenue leakage through shifting of business to the grey market and non-compliance.**

- All leading International markets tax on GGR at a rate between ~7-20%. (Example: UK, US, Australia, Germany)

- Markets which started taxing the prize pool instead of the GGR have reverted back to taxing only GGR. (Example: UK, France)
- Taxing on GGR instead of Prize Pool has been proven to increase tax revenues in the long term.

Learnings from earlier GST Council Discussions:

- Further, learnings from GST Council Discussions (Source: 37th & 38th Agenda Note) also indicate that taxation on face value drives legitimate business to the grey market. It was further observed that the value of supply may be fixed as Gross Gaming Revenue which is internationally Prevalent and that the tax rate may be suitably decided or rate applicable to be clarified.

The Online Skill Gaming industry strongly believes in the vision of the Hon'ble Prime Minister to make India a global hub of game development and services, we are committed to fulfilling the vision of the Hon'ble Prime Minister. However, a regressive tax structure will lead to destruction of this nascent industry in its infancy and encourage illegal domestic and offshore operators.

We would like to place the following facts about the online skill gaming industry for your kind consideration:

1. **Online Skill Games do not amount to 'gambling/ betting/ wagering' and is not a 'sin' industry:** Online Gaming includes both Games of Chance (which are legally recognised as gambling and betting activities) and Games of Skill (which are held to be legitimate business activities not amounting to gambling/ betting/ wagering by the Hon'ble Supreme Court and various high courts). The GoM appears to have taken a view different from the courts and has treated the online skill gaming industry at par with other sin industries and recommended a higher tax structure than Casinos. It may be noted that as per Article 14 of the Constitution of India, unequals cannot be treated equally. Treatment of online skill gaming at par with gambling and betting industry is violative of the principles laid down in the Constitution.

2. **Business model of Online Skill Gaming Industry is starkly different from that of Casinos or Lottery or any other gambling and betting activity:** Online Skill Gaming industry is a fully digital business and operates on wafer thin margins of 5% - 15% of the total Contest Entry Amount as platform fee and the rest is distributed back to the users completely as a prize pool. Additionally, it is important to note that the average ticket size for a majority of online skill games is between Rs 30 - Rs 40. The Online Skill Gaming Industry caters to the entertainment needs of the common man.

   This is in stark contrast to the casino or the gambling industry where the stakes are high and the house participates in the prize pool. The gambling industry also operates on higher ticket

sizes, majorly catering to a select group of affluent individuals with much higher purchasing power than the users of online skill gaming.

3. **Online Skill Gaming is fully digital and there is no scope for tax leakage:** It may be noted that unlike lottery, casinos and other gambling activities; online skill gaming is fully digital in nature, with 100% transactions processed digitally. All transactions on online skill gaming platforms are 100% traceable and made through legitimate banking channels. The concerns of tax authorities if any on tax leakage are completely unfounded.

We sincerely hope that the GST Council takes into consideration the above facts for deliberation. We also hope that the decision of the GST Council is not in stark contrast to the vision for the Gaming sector laid out by the government. A conducive view is likely to establish India as the hub of innovation and such policy measures would be in line with the dictum of the highest courts of the country. A liberal view towards the industry i.e. recognition of the Skill based gaming industry as an economic industry by the MEITY, a status quo be maintained in relation to the said sector. We are confident that such steps would certainly help realise the dream of the Hon'ble Prime Minister of India and usher economic benefits and self-realisation.

We look forward to your kind support on the matter and we are open to participate in further consultations that the GST Council or the GoM may undertake before making a final decision.

Best Regards
Yours Sincerely,

Arun Chawla
Arun Chawla

Secy (Revenue)

Dy. No. 2710951 /FM/MD/2022

Dated 01/7/2022

Dr Subho Ray
President, IAMAI
9818602842

IAMAI
Internet and Mobile Association of India

Honourable Madam Finance Minister, June 28, 2022

Subject: Representation - highlighting concerns regarding services provided by Online Skill Gaming operator under the GST Law (in reference to the report of the Group of Ministers "GoM" on Online Gaming)

I am very happy to share that the **Internet and Mobile Association of India (IAMAI)** has been actively working towards the progressive growth and development of the digital and internet businesses in India. Accordingly, we welcome the positive and progressive steps such as the formation of the AVGC Taskforce being taken to enable the gaming industry in India to be in line with the vision of the Hon'ble Prime Minister.

Madam, we wish to actively promote the sunrise sector of online gaming in India. Recent media reports indicate that the Group of Ministers (GoM) constituted to look into issues of GST for Casinos, Racecourses and Online Gaming have recommended increasing the GST to 28% on the entire valuation i.e. including the contest fee.

Globally as well as in India, the industry has witnessed significant growth. **We estimate that the sector will contribute nearly Rs. 60,000 crores in GST revenue between 2020 and 2025. It's exponential growth and potential can be witnessed from the fact that the industry attracted an investment of over Rs. 13,000 crores in the last 1.5 years.**

The online skill gaming operators provide services through online platforms where users can connect and engage in various formats of games. These are offered in a pay to play format and include fantasy sports, card – board games, esports, casual games, brain - puzzle games etc. There is predominance of skills required such as prior knowledge, experience, reflexes, practice, hand – eye coordination etc. these skills being crucial to winning in these games.

The supply of these services is classified under entry 998439 – Other Online Content Nowhere Else Classified and attract a levy of 18% GST. Section 7 of the CGST Act provides for 'taxable supply' for the purposes of levy of GST. These provisions are subject to Schedule III of the Act, wherein it lays down certain items that shall not be treated as supply of goods or supply of services and one such exclusion is the 'Actionable Claim' other than lottery, betting, and gambling. **Since games of skill are excluded from the ambit of gambling legislations, consequently the contribution for prize money relating to games of skill clearly falls outside the scope of taxable supply as an actionable claim.**

We have been engaging actively with the Group of Ministers "GoM" constituted to look into issues of taxability for Online Gaming, in this context it must be noted that "Games of Skill" are a legitimate business activity which enjoy protection under the Constitution - having significant and well settled jurisprudence. **Therefore, games of skill being accorded the same treatment as Games of Chance (betting/gambling/wagering etc.) will not only upend the established business models and negatively impact the continuity of the online skill games industry but also overlook the fact that the latter is illegal in most states, the judicial determination and distinction of the two.**

IAMAI
Internet and Mobile Association of India

The industry has been encouraged by the very recently held deliberations with the Ministry of Electronics and Information Technology on the proposed framework for the online skill games industry. It is requested that the current recommendation of the GoM maybe kept in abeyance till there is a more nuanced understanding of the same.

Globally, the steady progress of the gaming industry and potential of this sector has been unlocked through a stable and uniform taxation regime. Levy of GST on the platform fee or gross gaming revenue (GGR) has consistently demonstrated increasing tax revenues for the government, while supporting the robust growth of the industry.

We humbly request that the government maintain the current practice of levying GST on the platform fee or gross gaming revenue only. A predictable regulatory framework and supportive taxation policies will allow the industry to compete globally while significantly contributing to the Indian ecosystem.

Yours Sincerely,

Dr Subho Ray

Smt. Nirmala Sitharaman,

Minister for Finance and Corporate Affairs,

Ministry of Finance,

North Block, New Delhi, 110001

Government of India

BOMBAY CHAMBER

Bombay Chamber of Commerce & Industry

Sandeep Khosla
Director General

Secy(Revenue)

By Speed Post/Email

Ref : DGO/2022-23/010

July 8, 2022

Smt. Nirmala Sitharaman
Hon'ble Union Minister of Finance and Corporate Affairs
Ministry of Finance
Government of India
North Block
New Delhi 110 001

Hon'ble Finance Minister,

Subject: Recommendation for the Honourable Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming and Honourable GST Council regarding the valuation of online gaming under GST laws

1. **The Bombay Chamber of Commerce and Industry** is one of the oldest chambers in the country with an illustrious history of 186 years. The Chamber has played a significant role in supporting the development of industries in Mumbai over the last several decades. The Chamber serves as an effective vehicle of communication between the regulatory bodies, the corporate and the society. Over the past few years the Chamber has moved to facilitate trade and Industry in playing a larger role of **"Corporate as a Citizen".**

2. At the outset, we are extremely thankful to the Hon'ble Finance Minister, the GST Council, and the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming to **deliberate and re-examine the issue of rate and valuation of charging GST on the online gaming industry to keep the industry viable.**

Background

3. India today is recognised as a top and fastest growing countries for the online gaming sector. The sector has received a fillip through recent policy decisions such as the formation of the **AVGC task force** in this year's union budget, **allowing 100% FDI** and creation of the **inter-ministerial task force to regulate online skill gaming etc.**

4. The industry which contributes **INR 2,200 Cr annually in indirect taxes alone**, is expected to contribute **over INR 6,000 Cr annually by 2025**. The industry currently is paying GST at the rate of **18% on the platform fee or gross gaming revenue (GGR).** The platform fee or the gross gaming revenue is about 10-20% of the total contest entry amount (CEA).

5. As per recent media reports **after the 47th GST Council meeting, the GoM has recommended a rate of 28% on the online gaming services.** However, there is no clarity on the valuation for levying such rate of tax.

Established 1836
Admin Off.: The Ruby, 4th Floor NW, 29 Senapati Bapat Marg, (Tulsi Pipe Road), Dadar (W), Mumbai - 400 028. India
Tel.: +91 22 6120 0200 (B) 6120 0201(D) , Fax : +91 22 6120 0213 E-mail : dg@bombaychamber.com URL : www.bombaychamber.com
Reg. Off.: Mackinnon Mackenzie Building, 4, Shoorji Vallabhdas Marg, Ballard Estate, Mumbai 400 001. India O : +91 22 4910 0200

6. **Globally, the practice is to pay GST on the gross gaming revenue (GGR)** or the platform fee. Some countries that are in line with this practice are UK, Belgium, Denmark etc. In fact, the Fitment Committee recommended in 2019 that GST should only be paid on the gross gaming revenue (GGR).

GST is to be levied only on consideration

7. Under GST laws, GST can only be levied on the amount charged as consideration for supply. The term 'consideration' embodies the principle of contractual reciprocity and there must be a direct link between the consideration charged and the reciprocal supply. The consideration for the services undertaken by the operators has always been understood, to mean the platform fee or gross gaming revenue (GGR) only. Accordingly at present GST is paid at the rate of 18% on such value.

8. Contest entry amount (CEA) or the player deposits (which may be withdrawn and remain unused) are not the consideration received by the operator.

9. An increase of GST from 18% to 28% on GGR would amount to a 55% increase in the tax rate and will slow down the growth of this industry. However, the industry may still be able to absorb this cost. **However, if a rate of 28% is levied on the contest entry amount (CEA) or deposit, then the industry will have no option but to pass the tax burden to the user. Thereby making the entire industry become unviable.**

Impact on the industry and user

Rate (in %)	Valuation	GST Increase (in %)	Government	Industry	Consumer
18	GGR	-	~Rs.15,000 Crore GST collection for FY'23-FY'25	38% CAGR of Revenue	User base to increase to than 40 Crore from 20 crores by FY'25
28	GGR	~55%	Revenue should increase	Will slow down industry growth but operators can pay additional tax burden from their revenues	No impact
28	Net Deposits (Deposits-Withdrawals)	~55%	Revenue should increase	Will slow down industry growth but operators can pay additional tax burden from their revenues	No impact

- Define online skill gaming platform fees/Online skill gaming operators under GST legislation to remove the ambiguity through **inclusion of a separate service code for online skill-gaming operators.**

- ***The above proposition shall enable to ensure:***

  - ***Significant growth in GST revenue to the exchequer; 55% increase in GST which may lead to increase in overall projected cumulative GST collections from Rs. 16000 crores to the revised projection of Rs. 25000 crores during 2023 - 25***

  - ***The viability of the online skill gaming industry along-with further investments to sustain its phenomenal growth***

  - ***Adequate protection for the existing 20+ crore Indian gamers (which are expected to increase to 40 crore by 2025) by enabling platforms to absorb additional tax burden without passing it on to Indian consumers.***

  - ***Prevent leakage of tax revenues due to transfer of business from legitimate platforms to illegitimate offshore and grey market operators (nil revenue to exchequer from direct and indirect tax) due to exponential increase of over 1100% in GST as proposed by GoM.***

We hope that you will consider the representation favourably.

We would request for a meeting to explain our submission and discuss the related issues if so required.

Thanking you,

Yours faithfully,

Sandeep Khosla

CC: Mr. Vivek Johri, IRS
Chairman
Central Board of Indirect Taxes & Customs
Ministry of Finance
Government of India
North Block, New Delhi – 110 001

CC: Hon'ble Chairman, and Members of Ministers (GoM) on Casinos,
Race Courses and Online Gaming, Department of Revenue,
Ministry of Finance, North Block, New Delhi – 110 001

10th July, 2022

Smt. Nirmala Sitharaman
Hon'ble Finance Minister
Government of India
North Block, Raisina Hill
New Delhi 110011

Subject: Joint representation from investors in Indian Online Skill Gaming industry on proposed change in valuation of GST

Smt. Nirmala Sitharaman ji,

Kindly allow us to introduce ourselves. We, the undersigned, are representatives of venture capital firms, with investments across the world. Over the years, we have invested and supported several Indian Start-Ups in their various stages of growth, many of which are today some of the most successful enterprises on the international corporate firmament.

We have also made significant investments in India, particularly in firms in early and middle stages of their growth, and it gives us immense satisfaction to observe that many of these firms have done exceedingly well. Several are recognised as unicorns (firms with a valuation of more than USD 1 billion) and are acknowledged as pre-eminent names within their respective industries in the Asia Pacific region. The current valuation of our investments in Indian gaming companies is more than USD 10 Billion.

We are upbeat about India's economic prospects and believe that the stable and reform-oriented leadership of the Hon'ble Prime Minister and a resilient entrepreneurial zeitgeist, will make India one of the fastest growing major economies in the world. We, therefore, continue to invest and support several upcoming ventures with sound business models, and in sectors with strong growth prospects.

In this context, please allow us to bring your kind attention to the Online Skill Gaming (OSG) industry. In view of this sector's immense growth potential, gaming enterprises have attracted **investments over $2 billion** and believe that sector can emerge as a major growth engine for the Indian economy and contribute significantly to the Hon'ble Prime Minister's vision of a trillion-dollar digital economy. We are encouraged by the Government's support for the gaming industry, as evident in the constitution of an AVGC task force, and formation of an Inter-Ministerial Task Force at the level of Secretaries to create an enabling regulatory structure for the gaming industry.

This gives credence to our confidence to invest further in the burgeoning Indian gaming industry and towards making India a global gaming hub - a development that in turn will have multiplier effect for investments in sectors including mobile devices/ semiconductors, telecom, animation, visual effects, comics, cloud services, data centers and fintech.

The Indian Online Skill Gaming start-ups are currently valued at USD 20 Billion (INR 1,50,000 Crore), expected to grow to USD 40 Billion (INR 3,00,000 Crore) by 2025. The industry's current annual revenues are USD 2 Billion (INR 15,000 Crore) and projected to grow to USD 5.4 Billion (INR 40,000 Crore) by 2025. The industry currently contributes

more than USD 300 Million (Rs 2,200 Crore) annually in GST and is projected to increase to USD 750 Million (Rs 6,000 Crore) annually by 2025. Given the high growth momentum (CAGR of 38%) and potential, the online skill gaming sector has received foreign investment worth USD 2.7 Billion (INR 20,000 Crore) so far and is expected to receive USD 6.6 Billion (Rs 50,000 Crore) by 2025.

However, may we express our concern at some of the recent media reports that suggest that the GST council may be considering revising the GST tax structure for online gaming, with a proposed rate change to 28 per cent and for valuation of supply, instead of platform fee (also known as GGR or Gross Gaming Revenue), it could be levied on total Contest Entry Amount (CEA) or deposits. Changing the value of supply to entry fees or deposit, instead of GGR would make the business model of legitimate operators in the gaming industry unviable and may in turn lead to proliferation of grey market and illegal operators. As investors in global gaming companies, our experience suggests that both in Europe and the Americas where most regulators have realized that on the Internet where there are no national borders, citizens of a country are best served by a regulatory regime that promotes a local gaming industry with constructive tax policy and a regulatory structure to protect users with focus on fairness and responsibility.

Therefore, a move away from GGR and towards CEA or deposits, will be unfortunate and could cut short the growth path and lead to value destruction of this sector through significant reduction of investments, startups, and revenue to the exchequer. Many of the companies we have invested in are now looking to develop indigenous games for the global market in line with the Hon'ble Prime Minister's vision. These investment plans will also be adversely impacted if the businesses become financially unviable under a taxation system that is not based on GGR. Such a scenario could lead to an investment drought, crippling Indian gaming companies' expansion, research, and development plans, and unfortunately preventing them from contributing to Hon'ble Prime Minister's visionary ideas of Make in India, Digital India and Start up India.

As investors, we fear the possibility that the positive economic assumptions made for the past, present and future investments in this industry may no longer be valid. This will lead to significant reduction in valuation of the companies and industry and may result in investment write offs.

May we therefore request the GST council to continue to consider GGR as the value of supply. This will not only be in sync with international best practices but will also allay the apprehensions of the industry operators, and the investors alike - both groups are committed to contribute to India's economic progress.

Yours Sincerely,

Signature: DocuSigned by: Vani Kola 0517113430BD412...	**Signature:** DocuSigned by: [signature] 35AEEBC4AE994D...	**Signature:** DocuSigned by: John S Salter 0783DDDCAA204EE...
Name: Vani Kola	**Name:** Mohit Kansal	**Name:** John S Salter
Designation: Managing Director	**Designation:** Managing Director	**Designation:** Partner
Company: Kalaari Capital	**Company:** Clairvest	**Company:** Raine

Signature: Shashin Shah
Name: Shashin Shah
Designation:Managing Partner
Company: Think Investments

Signature:
Name: Navroz D. Udwadia
Designation:Co-founder & Partner
Company: Alpha Wave

Signature:
Name: Ravi Mehta Designation:
Managing Director Company:
Steadview Capital Management

Signature: Rick Fortunato
Name: Rick Fortunato
Designation:General Counsel
Company: Tiger Global

Signature: Jason Kirschner
Name: Jason Kirschner
Designation:Managing Partner
Company:Footpath Ventures

Signature: R Anandan
Name: Rajan Anandan
Designation: MD & Partner
Company: Sequoia Capital India

Signature:
Name: Dan Sundheim
Designation: Founder & Chief Investment Officer
Company: D1 Capital

Signature: Alec Scheiner
Name: Alec Scheiner
Designation:Partner
Company:Redbird

Signature:
Name: Ashish Gulati
Designation: Partner
Company: Malabar

Signature:
Name: Dan Taylor
Designation: Chief Executive Officer,
Company: Flutter

Signature:
Name: Indranathsingh Seewoorutton
Designation: Director
Company: Flaxen Investments Limited

Signature:
Name: Arjun Sethi
Designation: Cofounder and Partner
Company: Tribe Capital Management, LLC

Signature:
Name:
Designation:
Company:

Roland Landers
CEO, AIGF

Dy. No. 27/8018 FM/PS/2022
Dated 27/07/2022

July 06, 2022

Smt. Nirmala Sitharaman ji
Hon'ble Union Minister of Finance and Corporate Affairs
Government of India
North Block
New Delhi- 110001

Rev Secy
PS to FM

Subject: Submission on Online Gaming in response to recommendations of Group of Ministers (GoM) on Casinos, Race Course and Online Gaming

Hon'ble Madam,

We are writing to you on behalf of the **All India Gaming Federation (AIGF)**. AIGF is the largest industry body for self-regulation for online gaming in India. Being the oldest, largest and the most diverse industry association for online gaming, we currently have more than 70 online skill gaming companies across esports, fantasy gaming, casual gaming, educational skill games and other formats as members, with a combined user base of over 400 million users, and collectively representing the majority of the skill gaming operators across all gaming formats, including a significant portion of the Indian online gaming MSME sector.

The Indian online gaming ecosystem is one sunrise sector, where we see unparalleled opportunity and potential that we believe is going to establish India as a global leader in online gaming. Online gaming is currently a $ 2bn (INR 16,000 crores) sector, set to reach $ 7bn (56,000 crores) by 2026. Compared to leading gaming markets, which are

Tiffany, 1st Floor, Hiranandani Road Hiranandani Estate,
Off Ghodbunder Road Patlipada, Thane (West) 400607
Registered Number : F-66001(M)

+91 99302 87888

roland@aigf.in

C/O Kworks Technologies Pvt Ltd, Corporate Serviced Offices Pvt Ltd
Level 10, Plot 18-20, Hindustan Times House, Kasturba Gandhi Marg
New Delhi 110001

www.aigf.in

growing at 10% growth rate annually, the Indian market has recorded a 40% growth rate. The total number of online gamers grew from 360 million in 2020 to 390 million in 2021. **The industry attracted investment of about $ 570 mn (4,500 crores) between 2014 and 2020. However, in the last 16 months itself the industry has received investment of over $ 1.6 bn (13,000 crores). Today, due to the prowess of its coffers, the industry contributes $ .5 bn (4,000 crores; 2021-22) to the exchequer and is expected to contribute $ 5bn (40,000 crores) in the next three years (2022-25).**

Madam, as your goodself are aware the Hon'ble Prime Minister has spoken multiple times over the past few years about need to tap the digital gaming potential and for the Indian online gaming industry to compete globally. We want to assist with and support this vision and make India a leader in the online gaming eco-system. First and foremost, we would like to extend our heartfelt gratitude to you and the Government of India for constituting the AVGC Taskforce, and also humbly thank the Government of India for acknowledging the industry's request for a uniform central framework and setting up an inter-ministerial taskforce to create an enabling policy and regulatory ecosystem for online gaming in India.

It is in this context, we refer to recent media reports and statements wherein it has been indicated that the Group of Ministers (GoM) on Casinos, Racecourses and Online Gaming has recommended increasing the GST on online skill gaming by up to 1500%.

Madam, the proposed tax change, and application of GST on the Contest Entry Amount will lead to a situation where the applicable GST will around 15 times the current GST and will club constitutionally protected online skill games with betting and gambling, which is illegal in most parts of the county. This will derail the growth of this nascent industry and very likely lead to the demise of the industry. Any change from the status quo will significantly reduce the revenue for the companies, thereby making the business unviable. Online gaming is a sunrise sector, which is growing at a steady place and adding more revenue to the exchequer with every passing year.

It is our humble request to your goodself that the Government maintains the current practice of levying GST on platform fee or gross gaming revenue (GGR), as this tax regime has consistently proven to increase tax revenues for the government along with supporting the robust growth of industry.

We have been working with the most credible tax and consulting firms to understand the implications of this decision on the sector and the economy, and have attached some documents with this letter. We hope that these are of assistance to the Ministry and the GST Council, and will be happy to render any assistance or provide additional details as required by your offices.

A predictable regulatory framework, and supportive taxation policies will allow the industry to compete on the world stage. This will also provide confidence to the investors and entrepreneurs who want to "Create in India" and take "Made in India" games to the world.

We sincerely hope that the above request is considered positively in the interest of protecting India's nascent and high growth potential online gaming industry.

We once again want to sincerely thank you for taking this cause up for the industry, which will help "Create in India" and take "Made in India" games to the world.

Thanking you

Yours sincerely,

Roland Landers

CEO, AIGF

Encl:

i. EY-AIGF, Online Gaming: Taxing entertainment Sinfully (July 2022)
ii. LSK-AIGF, Legal Analysis of GoM Recommendations on Online Gaming (July 2022)
iii. EY-AIGF, Online Gaming in India: the GST conundrum

INDIAN ONLINE SKILL GAMING INDUSTRY

Submission to GoM on Casinos, Race Courses & Online Gaming

AIGF

Online Gaming Industry

NATIONAL VISION

Hon'ble Prime Minister
Shri Narendra Modi

"भारत मोबाइल गेमिंग को लेकर दुनिया के टॉप 5 मार्केट में से एक है। आंकलन है कि आने वाले दो सालों में, ये सेक्टर 3 लाख करोड़ का हो जायेगा। अब मुझे बताइए, ये गेमिंग हम बच्चों को रोक नहीं पाएंगे। परिवार में बच्चा मोबाइल फोन पर गेम खेल रहा है, नहीं रोक पाएंगे। लेकिन क्या हमारे बच्चे खर्च कर के विदेशों से आई हुई गेम्स खेलेंगे कि हिंदुस्तान भी कुछ करेगा?

*तो इसलिए हमारे देश की प्रतिभा को मौका मिले, इनोवेट करने का अवसर मिले इस सेक्टर में **क्रिएट इन इंडिया और ब्रांड इंडिया** को सशक्त करने का पूरा पोटेंशियल है।"*

- Hon'ble PM's Address on Aatmanirbhar Arthyovivastha

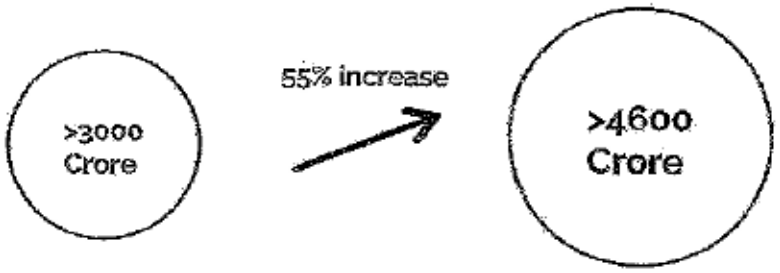
Online gaming will be a cornerstone of Digital India and contribute to the vision of $1 trillion digital economy

AIGF

GoM Proposed Recommendations

ECONOMIC OVERVIEW

GST Contribution to the exchequer



GST Contribution at 18% on GGR (Platform fee) by top 10 companies.

GST Contribution at 28% on GGR (Platform fee) by top 10 companies.

Economic overview of the industry

- >950 gaming startups
- INR 13,500 crores investment (2015 – now)
- 50 thousand direct and 5 lacs indirect jobs
- Currently a $2 billion industry and expected to reach $5 billion by 2025

GoM Proposed Recommendations

ECONOMIC IMPACT

Particulars	Current practice: 18% GST on GGR (platform fees)	Industry request: 28% GST on GGR (platform fees)	Unviable option: GST on entry fee valuation (28%) - CEA
Entry Fees (A)	100	100	100
Platform fees (B)#	10	10	10
GST (C)	18	28	21.87
Method of GST calculation	(B*18%)	(B*28%)	(A*28/128) *
Prize Pool (D = A-B-C)	88.2	87.2	68.13
% change in Prize Pool in comparison to current method	-	-1.13%	-30%
% increase in GST paid	-	55.5%	1115%

Impact of 28% GST on Contest Entry Amount

- 1000 to 1500 percent increase in GST
- Cost per game for player will increase by at least 3 times

GST levied on total contest entry amount at any rate is highly unviable for the industry

*Assuming value of supply is considered to be 100/128 of Entry Fee
#Platform fee ranges from 5% to 15% depending on game formats

GoM Proposed Recommendations

CONSTITUTIONAL ISSUES

Game of skill is constitutionally & diametrically opposite from game of chance

- The Supreme Court and multiple High Courts have, consistently over a period of 65 years, held that games of skill are legitimate business activities protected under the Indian Constitution.
- Games of skill are protected under Article 14, 19 (1)(a), 19(1)(g), and 21 of the Constitution.
- Games of chance on the other hand are not legitimate business activities as they are *res extra commercium*.

Skill Lotto Judgment not a basis for taxing actionable claims of online skill gaming

- *Skill Lotto Solutions v UoI* is a judgment on lottery which is held to be gambling and is *res extra commercium*.
- The judgment held that actionable claim in case of lottery may be taxed even though other legitimate business are not.

  There is an intelligible differentia to discriminate between gambling activities and legitimate business activities.
- The issue of violation of article 14 and taxation of actionable claim was decided by *Skill Lotto* based on *R M D Chamarbaugwala* judgment. *Chamarbaugwala* was the first judgment to differentiate between games of skill and games of chance and was delivered by a 5 judge constitution bench.

GoM Proposed Recommendations

SUBMISSIONS

Online Skill Gaming is expansive and has multiple gaming formats and genres

- Online skill gaming is not limited to one format. It spans across multiple video game genres including chess, carrom, archery, cricket, pool, card games, racing games, strategy games, quiz games and other social games.
- Fantasy games constitute less than 1/4 of total gaming revenue.
- Every video game format involves 2 or more players using their skills to compete with each other and win rewards. Most skill games are of short duration of 1-2 minutes and continuous.
- Taxing skill games same as lottery is not only unconstitutional but may be based on limited view of the broad online skill video game formats.

We humbly submit that

- That GoM recommends and GST Council maintains the policy of levying GST on the platform fee (GGR).
- That GoM recommends any rate of GST to be charged on platform fee (GGR).

THANK YOU

secretary@aigf.in | www.aigf.in | roland@aigf.in

5

Dy. No. 2512050
Dated 14/02/2022

Office of the Finance Minister
11 FEB 2022
Received

PS to FM

trust

GST LEVY ON FANTASY SPORTS IN INDIA

WHITE PAPER

Prepared By:

Shalu Misra and Anuj Saxena
Advocates, TIOL Knowledge Foundation
TIOL House, Plot No 490, Udyog Vihar Phase V
Gurugram, India – 122016

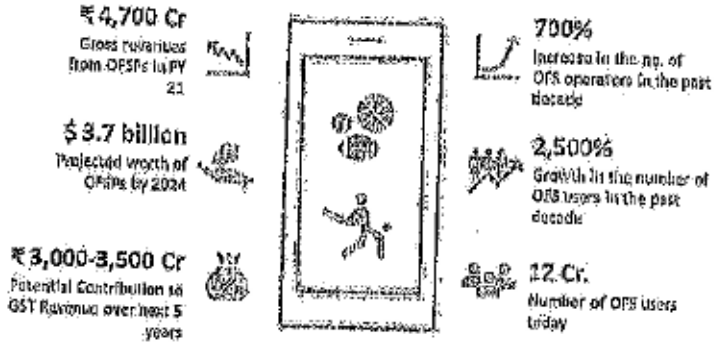
RS in Meeting

Contents

1. Introduction

Before the advent and rapid adoption of technology, sports and gaming activities were limited to being played in real-life settings. Now, with India's consumer digital economy poised to grow from USD 85 bn in 2020 to USD 800 bn in 2030, coupled with the widespread permeation of affordable and accessible broadband and mobile data, millions of Indians – across ages – are embracing the Internet and smart-phones[1]. Against this backdrop, sports and gaming activities, too, are undergoing a digital transformation, as a result of which India's online mobile gaming market is experiencing exponential growth. Part of this trend can be attributed to India's younger, more educated population logging online with more disposable incomes - both of which are expected to fuel discretionary spending.

According to a report published by FICCI-EY[2], India's online gaming industry is estimated to be worth INR 18,700 Cr by 2022. Gross revenues from online fantasy sports platforms (Fantasy SportsP) alone stood at approximately INR 2,400 Cr in FY20 and grew to INR 4,700 Cr in FY21. According to a PwC report, the online fantasy sports sector is expected to be worth USD 3.7 billion by 2024, with the potential to contribute GST revenue of INR 3,000 Cr to INR 3,500 Cr over the next five years.[3] The Indian market has witnessed a 700% increase in the number of fantasy sports operators in the past decade, and a 2500% growth in the number of fantasy sports users – clocking to around 13 crore Indian users today. This is a testament to the potential of online fantasy sports as a veritable sunrise industry which is fast transforming India's



[1] India's consumer digital economy to grow 10x to $800 bn by 2030: Redseer | Business Standard News (business-standard.com)
[2] FICCI-EY Report on India's Media & Entertainment Sector Reboots 2020 'Playing by New Rules' (March 2021)
[3] PWC-IFSG Federation of Sports Gaming Report on Taxation of Online Fantasy Sports Gaming Market in India (May 2019)

digital and sports economy. The figure alongside presents a snapshot of the Indian Online Fantasy Sports (Fantasy Sports) industry.

The list of platforms offering Fantasy Sports is on the rise as demand continues to grow. India is home to more than 150 operators, with some of the prominent ones being Dream11, MyTeam11, Paytm First Games, Mobile Premier League (MPL), My11Circle, Fanfight, Khelo Fantasy Live, Fanfight, Sportasy, FSL11- Fantasy Sports League, among others.

The extant regulatory framework for online gaming and fantasy sports is neither clear nor uniform in its application across India. There is currently no dedicated legislation that governs fantasy sports . Operators have to deal with the archaic Public Gambling Act, 1867 and its various renditions which have been adopted by states. The recent Supreme Court verdict has upheld the judgments of various high courts and has reaffirmed that Fantasy Sports is a game of skill and does not amount to gambling/ betting/ wagering. The recent Madras High Court judgement also clarifies that online games of skill cannot be prohibited under gambling or betting laws. Such laws neither envisaged nor accounted for digital and online formats of skill gaming and, therefore, lack the context of fantasy sports – making them unsuitable for regulating the sector. In December 2020, NITI Aayog, the Indian Government's policy think-tank published a discussion paper with draft guiding principles for the online fantasy sports[4]. Notably, NITI Aayog recommended a self-regulatory model of governance, rather than top-down regulatory control.

Considering the exponential growth of fantasy sports and the potential benefits to India's digital economy, providing tax certainty to the industry and also arriving at an optimal tax rate is critical for attracting investments, FDI and also ensuring growth of tax revenue for the government. Therefore, this White Paper details the opportunities and risks present to the sector and outlines recommendations to appropriately tax fantasy sports to ensure the sector's sustained growth and contribution to India's burgeoning digital and sports economy.

[4] *NITI Aayog Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India (December 2020)*

2. Online Fantasy Sports – An Explainer

2.1. Technological Platforms

Fantasy sports are typically offered on web-based technology platforms by various operators. It is noteworthy that most of the users participate in online contests for free, while only a small fraction of users opt for 'pay-to-participate' contests. As per data collected by the Federation of Indian Fantasy Sports[5], India's self-regulatory body for fantasy sports, about 80% of all users participate in free contests and only about 20% choose to participate in 'pay-to-participate' contests.

2.2. Creation of Teams

To participate in online fantasy sports, users of these platforms have to create their own virtual sports teams by selecting real-life players who are scheduled to play in an upcoming officially sanctioned real-life sports match. For instance, if a match is scheduled between India and England on a particular day, the operator will allow users to create a team of 11 players from amongst the real-life playing squad of the two teams. After forming their virtual/fantasy team and having assigned each player his/her role, the user then earns points based on the actual performances of his team's real-life counterparts during the match. By virtue of being based on statistics generated from officially sanctioned sporting events, fantasy sports share a symbiotic relationship with real-life sports. Users cannot make any changes to their teams after a match commences.

2.3. Use of Skill

Users compete against other users' teams based on statistics generated by the on-field players' real-life performances. It is important to note that users are required to analyze the players' past and present performances, statistics as well as data while forming their virtual/fantasy team, which correspondingly results in being awarded with points based on specific statistical criteria and predetermined points system. Therefore, to out-perform the competition, users have to exercise considerable amounts of skill, knowledge, and judgement while creating their fantasy teams. Ultimately, users who have more knowledge of how teams

[5] Federation of Indian Fantasy Sports – report

and players have historically performed / are likely to perform, are aware of pitch and match conditions, and can compute other contingencies among other things, have a higher probability of scoring more points for their fantasy sports team. According to studies conducted by IIM-Bangalore[6] and professors from MIT and Columbia University[7], research has shown that skilled users who have more knowledge and conduct research about a real-life sporting event, have a higher probability of scoring more points for their fantasy sports team.

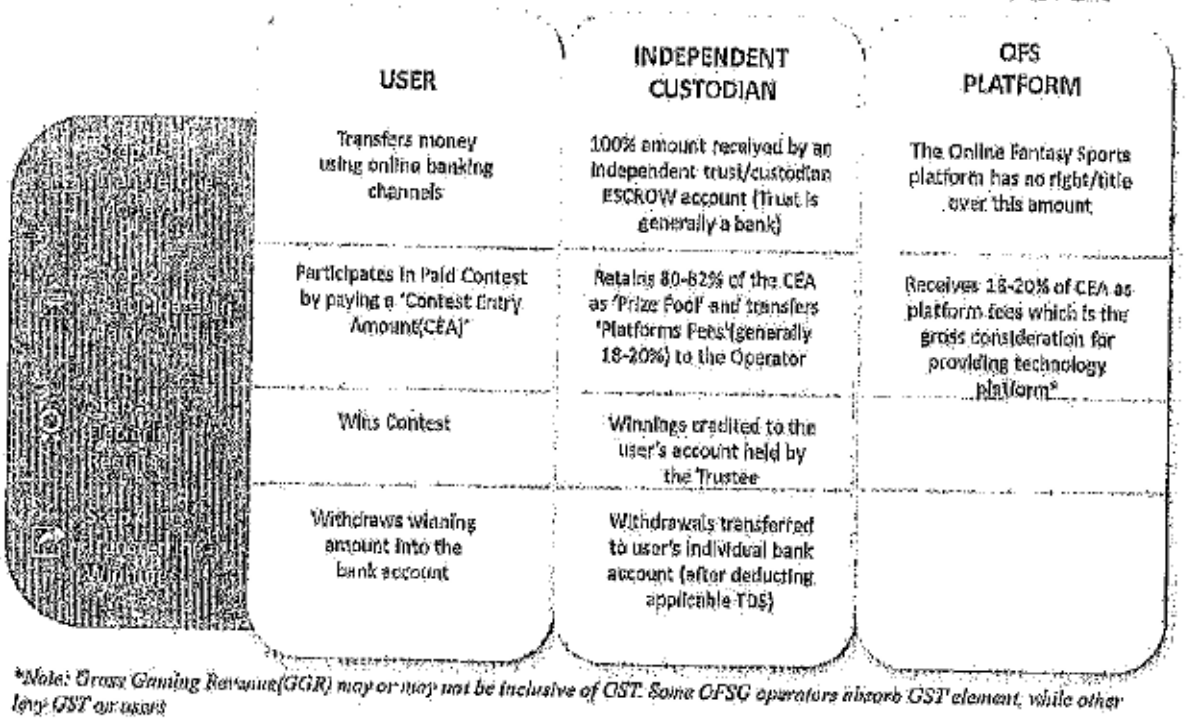
2.4. Cash Flow

In the case of 'pay-to-participate' contests, users are required to pay money using accredited banking channels or payment gateways after going through a KYC process, in full compliance with all the applicable laws in India. The entire sum is received online, notably with no cash transactions involved, and is held by an independent trustee/custodian in an ESCROW account maintained in a banking institution. Upon payment of the *Contest Entry Amount* (CEA), the user enters a 'pay-to-participate' contest. During this phase, the independent trustee holding the CEA retains approximately 80-82% as a *Prize Pool* and transfers the remaining 18-20 % to the operator as platform fee providing the online fantasy sports services. The amount so received by the operator constitutes consideration for providing the technology platform to the user. Such consideration received by the operators is generally referred to as the Platform Fee or *Gross Gaming Revenue* (GGR). This is not inclusive of GST; some operators absorb the GST while others may levy GST on the users over and above the GGR.

Upon completion of the contest, the predetermined winnings based on rankings are the user's virtual account. At the time of withdrawal of winnings, an applicable TDS is deducted, and net winnings is credited to users' bank account after a thorough KYC process. The cash flow cycle is explained in the figure below.

[6] https://indianexpress.com/article/technology/tech-news-technology/fantasy-sport-dream-11-limb-cartesian-study-6165065/

[7] https://www.hindustantimes.com/other-sports/fantasy-sports-team-selection-requires-higher-skill-than-mutual-fund-management-study/story-u9zrOlUT85H2ycLSQRFuLI.html



	USER	INDEPENDENT CUSTODIAN	OFS PLATFORM
	Transfers money using online banking channels	100% amount received by an independent trust/custodian ESCROW account (Trust is generally a bank)	The Online Fantasy Sports platform has no right/title over this amount
	Participates in Paid Contest by paying a 'Contest Entry Amount(CEA)'	Retains 80-82% of the CEA as 'Prize Pool' and transfers 'Platforms Fees'(generally 18-20%) to the Operator	Receives 18-20% of CEA as platform fees which is the gross consideration for providing technology platform*
	Wins Contest	Winnings credited to the user's account held by the Trustee	
	Withdraws winning amount into the bank account	Withdrawals transferred to user's individual bank account (after deducting applicable TDS)	

**Note: Gross Gaming Revenue(GGR) may or may not be inclusive of GST. Some OFSG operators absorb GST element, while other levy GST on users*

3. Economic Potential of Online Fantasy Sports

3.1. Burgeoning Economic Growth of the Fantasy Sports Industry

India is the world's largest Fantasy Sports market with around 13 crore Indian users, beating the USA's 50-year-old status as the world leader. India is also home to the world's largest Fantasy Sports operator and more than 150 operators providing online fantasy sports. According to the NITI Aayog draft guidelines on regulating the Fantasy Sports Industry, with the significant growth of this sector in recent years, it has tremendous potential to continue attracting foreign investment, increase innovation, and generate employment in India. With rapidly surging demand, a large market of sports fans and complementing pool of software development talent in India is on the cusp of becoming a global hub for this sunrise industry[8].

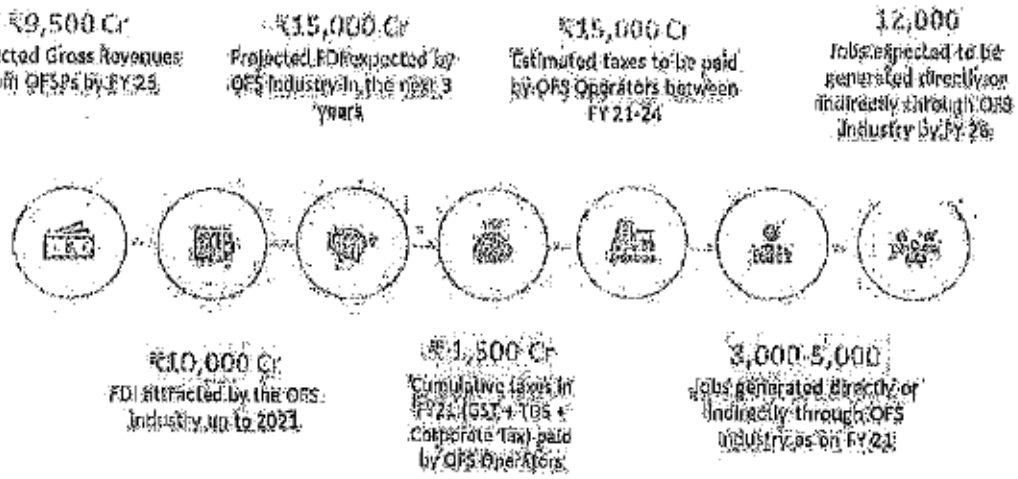
According to data compiled by the Federation of Indian Fantasy Sports, the Fantasy Sports Industry has generated INR 4,700 Cr in revenue in FY21 which is projected to grow to INR 9,500 Cr by FY23. In terms of investment potential, the Fantasy Sports Industry has already attracted INR 3,500 Cr in FDI as of FY21, with another INR 10,000 Cr in investments projected over the next few years. Fantasy Sports operators have so far paid INR 1,500 Cr in taxes for FY21 (GST + TDS + Corporate Tax), which is estimated to amount to INR 15,000 Cr between FY20 – FY24. A PwC report published in 2019 estimated the GST component contributed in the next five years to be approximately INR 3,000 – 3,500 Cr. In terms of employment, the Fantasy Sports sector has already generated 3,000 – 3,400 jobs directly and indirectly and is projected to contribute 12,000 additional jobs to India's labor market in the next 2-3 years. Key figures indicating the economic potential of the Fantasy Sports industry is presented in figure 3.

3.2. How Online Fantasy Sports is Amplifying Growth in the Sports Sector

According to a White Paper published by Indiatech, mainstream sports like cricket continue to dominate the Indian sports landscape. However, a new generation of sports enthusiasts

[8] *NITI Aayog Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India (December 2020)*

are developing interest in other sporting activities, including hockey, kabaddi football, basketball, and volleyball, among others.



Source: Federation for Indian Fantasy Sports

This growing interest in other sports can be attributed partly to Fantasy Sports, which has resulted in bringing together many large brands, sporting teams, advertisers, and sporting stars. With the significant increase in Fantasy Sports and its employment generating potential in the sports sector and allied services, the Fantasy Sports industry has contributed to existing businesses including online sports scoring platforms, online sports content aggregators, sports merchandising and e-commerce, online sports streaming, travel and sports experience, online coaching and sports turf management, among others[9]. Several large sporting brands are looking towards Fantasy Sports as a medium to market and promote their products and services across an array of sports.

Additionally, as the market has grown, users have started watching new sports because of their interest and inclination towards fantasy sports. According to a Kantar and FIFS survey, 59% of Fantasy Sports users have started watching new sports because of participating on Fantasy SportsPs while 48% of users now watch almost every sport, irrespective of team or country. Fantasy Sports operators offer fantasy leagues across a variety of sports like football,

[9]Indiatech White Paper on Online Fantasy Sports 'Adding Value to the Indian Sporting Ecosystem' (September 2020)

hockey, kabaddi, baseball, volleyball so that diverse interests of sports fans are catered to. Therefore, in addition to catering to those interested in mainstream sports like cricket, Fantasy Sports has led to an increased awareness and acceptance towards other indigenous sports such as kabaddi. This is expected to have a snowball effect and reflect in the growth of real-life sporting activities beyond mainstream sports, which will ultimately result in the growth of the Indian sports sector.

4. Taxation Landscape for Online Fantasy Sports

4.1. Rate of GST Currently Levied

With respect to the issue as to whether online fantasy sports would be covered under the scope of Online Information Database Access and Retrieval Service, it is seen that these services are provided through the medium of internet and are received by the recipient online without having any physical interface with the supplier of such services. The services included here are: (i) advertising on the internet; (ii) providing cloud services; (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network; (v) online supplies of digital content (movies, television shows, music and the like); (vi) digital data storage; and (vii) online gaming.

However, it worthwhile to note that the online gaming mentioned here simply involves the downloading of games from the internet and does not include any element of interaction with the players, which is a mainstay of online fantasy sports.[10]

Currently, online fantasy sports and game operators pay GST at a rate of 18% under Chapter Heading 998439. This tax rate is levied on the Platform Fee or GGR amount received by the operators as service fees towards usage of their platform. The scheme of classification of services as given in the Annexure to Notification Number 11/2017-CT(R) dated 28.06.2017 has been adopted from the Central Product Classification Scheme and as per the Central Product Classification of goods and services, online games have been classified under sub-heading 84391 of Heading 8439 pertaining to *Other Online Content*. On this basis, all the online games will be covered by the sub-heading 998439, pertaining to *Other Online Content Nowhere Else Classified* and accordingly Serial Number 22 of the rate notifications would attract 18% GST.

[10] https://www.cbic.gov.in/resources//htdocs-cbec/gst/51_GST_Flyer_Chapter42.pdf

Determining the rate of tax to be levied upon online gaming is the statutory prerogative of the GST Council. To this end, on May 24, 2021, the GST Council constituted a Group of Ministers (GoM) to examine the issue of valuation of services provided by Casinos, Racecourses and Online Gaming portals and determine the taxability of certain transactions with reference to the current legal provisions and order of Courts on related matters. Under the Terms of Reference, the GoM is expected to provide clarity and remove any scope for misinterpretation.

4.2. Actionable Claims in Online Fantasy Sports

As is observed from the aforementioned section on the cash cycle of the money pooled in by the users of online fantasy sports, the receipt of a percentage of such amount by the operator providing the platform as platform fee and the transfer of the remainder of prize pool into the accounts of winning users, the question arises as to whether or not any of these amounts would qualify as actionable claims.

In this regard, the High Court of Bombay in ***Gurdeep Singh Sachar Vs Union of India*** reported as ***2019-TIOL-2687-HC-MUM-GST***[11] has held that the amount pooled in the ESCROW account, qualifies as actionable claim, considering that such amount is to be distributed amongst the winning participating members as per the outcome of a game. The relevant portion of the judgment is extracted –

> *"...13. In the instant case, admittedly, there is no dispute that the amounts pooled in the ESCROW account is an 'actionable claim', as the same is to be distributed amongst the winning participating members as per the outcome of a game. But, as held hereinabove since the activities of the respondent No.3 do not amount to lottery, betting and gambling, the said actionable claim would fall under Entry 6 of the Schedule III under Section 7(2) of CGST Act. 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..."*.

[11] https://taxindiaonline.com/RC2/caseLawDet.php?CioP;mnXVZ=MTUONTM0

The Court further observed that the transaction relating to actionable claim qua the amounts of participants pooled in ESCROW arrangement, for which only acknowledgement is given, does not qualify as supply of goods or supply of services. Hence the Court held the same to be outside the purview of *consideration* and consequently no GST was to be levied on such amount. The relevant paragraph is extracted –

> *"...15. Since the CGST Act itself do not allow the imposition of Tax on such 'actionable claim' in relation to the Online Fantasy Sports Gaming of the respondent No.3, it being other than lottery, betting and gambling, the said Rule 31A(3) of CGST Rules 2018 cannot be read in such a manner so as to override the parent CGST Act...";*

The Court further emphasized that Rule 31A of the CGST Rules 2017 was inapplicable to online sports and games, since the actionable claims therein were amongst the actionable claims as per Schedule III, which are not considered to be supply of goods or supply of service. The Court also pointed out that the actionable claim as per Rule 31A was limited to activities which involved a game of chance, such as betting, gambling or lottery.

4.3. Need for Distinction and Clarity in Taxation Practices for Games of Skill and Games of Chance

It is therefore important to clarify that online fantasy sports have been classified as games of skill. The legality of such a business models have been questioned and Courts have held that a fantasy sport is predominantly a *game of skill* and not a *game of chance* and hence does not qualify as gambling/betting. On July 30, 2021, the Hon'ble Supreme Court dismissed an appeal against a Rajasthan High Court decision, which held that online fantasy sport platform, Dream11, involves skill and is, therefore, not gambling[12]. The bench noted that the question of online fantasy sports being predominantly a game of skill was *non res integra* i.e., is decided and settled (Refer to Appendix A for judicial pronouncements on the same).

[12] 'Dream 11' Fantasy Sports Game Is Not Gambling; Supreme Court Upholds Rajasthan HC Judgment Dismissing PIL Seeking Its Ban (livelaw.in)

Additionally, IIM-B, MIT and Columbia have mathematically proven that the online fantasy sports format legally recognized by the Indian Courts is a game of skill[13]. In fact, in the MIT and Columbia study, it has been noted that team selection on online fantasy sports requires demonstration of a higher degree of skill than required to manage a mutual fund portfolio[14].

To understand the concept of skill versus chance, one must first understand the term *betting*. According to the Oxford dictionary, 'betting' is "the action of gambling money on the outcome of a race, game, or other unpredictable events." Results and winnings on online fantasy sports platforms are in no way dependent on the *outcome* of a real sports match/event. Instead, the fantasy team earns points based on the real-life sportspersons' actual performances. Moreover, users must exercise their knowledge about a sport and create a team based on statistics and information in order to be successful.

At times, games of skill and chance appear to have some overlapping attributes. Most games across the spectrum – real-life or virtual - will have elements of both skill and chance. Whether it is considered a game of skill or game of chance will depend on which element is the dominant factor in determining the outcome of the game. Skill can include any of the following[15] -

a) A learned or developed ability.

b) Strategy, or tactic.

c) Physical coordination or strength.

d) Technical Expertise.

e) Knowledge and means of accomplishing a task.

Therefore, while online games of skill are skill predominant they also contain an element of chance. However, chance is not the dominant factor in determining the outcome of the game. This is the universal truth for any sports or game – whether real-life or virtual. For instance, if there was no element of chance in a football match, there would be no uncertainty. However, the element of skill becomes the dominant factor in determining who has the better chance

[13] Fantasy sports are skill dominant, finds IIMB-Cartesian study | Technology News,The Indian Express
[14] Is It Luck or Skill: Establishing Role of Skill in Mutual Fund Management and Fantasy Sports (mit.edu)
[15] https://taxindiaonline.com/RCZ/eseLawDet.php?QoPmnXyZ=MTU0NTM0

of winning, as demonstrated by a game of skill. This was echoed in the Madras High Court's order, which recently struck down the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021[18]. In its order, the bench referred to a previous Madras High Court judgement in ***Dr. K.R. Lakshmanan v. State of Tamil Nadu,*** wherein it was held that a game of skill may necessarily involve an element of chance, but the success therein would depend "principally upon the superior knowledge, training, attention, experience, and adroitness of the player." The judgement also noted that the "wide-ranging" blanket ban imposed on online games involving real money by the legislation did not pass the least intrusive test and, thereby, violated Article 19 (1) (g) of the Constitution that grants citizens the right to practice any profession or business activity.

Therefore, it becomes crucial to create a different valuation schema for online fantasy sports as it is not a game of chance and does not have a claim on the Prize Pool contributed by users for participating in paid contests. To this end, this White Paper offers the following recommendations to the GoM and a way forward to enable the Fantasy Sports Industry to continue contributing to the growth of India's digital and sports economy.

[18] 'Rummy & Poker Are Games of Skills' : Madras High Court While Striking Down Online Gaming Ban (livelaw.in)

5. Recommendations and Way Forward

The GST Council's Group of Ministers is empowered to look into appropriate valuation and taxability of certain transactions of online sports and gaming activities, including online fantasy sports. They are expected to submit their final recommendations to the GST Council once all discussions are concluded.

Global Practices define 'Contest Entry Amount' as 'Stakes' and 'Platform Fees' as Gross Gaming Revenue (GGR). Globally, GST is applicable only on GGR, which is calculated by deducting the Prize Pool from the Stakes.

As per a report compiled by the Internet & Mobile Association of India (IAMAI)[17], some State Tax Authorities raise the question whether GST should be applicable on the entire Contest Entry Amount, which includes users' contribution to Prize Pool. The Fantasy Sports industry has also sought clarification from the GST Council on the applicability of tax. The industry pays 18% GST on Platform Fee or GGR collected (consideration amount against the supply of services by the online fantasy sports operators which is the subject matter of levy of tax under the GST Law). The report further mentions that in other nations, the levy of VAT or GST is confined to the net earnings (GGR) of the platform owners (Refer to Appendix B for international practices).

GST on Gross Gaming Revenue would be consistent with global practices. For instance, in the United Kingdom, the current rate of tax is 15% on the Gross Gaming Revenue; therefore, it is estimated that 95% of the user base is engaged through regulated platforms/channels. When the rate of tax is higher, like in Greece - where tax on wagering is 35% on the Gross Gaming Revenue - it is estimated that only 72% of players use the regulated platforms. When a tax is imposed on turnover (similar to GST on face value being imposed in India) players are less likely to use regulated platforms. For example, in Poland - with the rate of tax being 12% on the turnover (one of the highest but still less than 50% of the tax rate of India) - it is estimated that only 40% of players use regulated platforms.[18]

[17] https://cms.iamai.in/Content/ResearchPapers/c1048d26-0dd6-4b81-87d3-25a3fad96e5a.pdf
[18] https://www.ukbc.com/bringing-gst-in-the-indian-gaming-sector-in-line-with-global-practices/

The IAMAI report recommends that the amounts contributed by players towards the Prize Pool should qualify as actionable claim. The IAMAI asserts that taxing the entire amount is unwarranted, unjust and beyond the provisions of Rule 31A (3) of the CGST Rules 2017. The report further suggests that the taxation of Gross Gaming Revenue should be in line with the interests of the Government as well as the online fantasy sport operating platforms as this would put India at par with prevalent practices in numerous other countries like the United Kingdom, USA, Sweden, Spain, etc.

This White Paper analyzes various aspects of online fantasy sports, with a primary focus on GST taxation, based on numerous judicial rulings, surveys, and studies. Additionally, it takes into consideration the views and opinion of key subject matter experts, who attended a recent webinar organized by TIOL titled ***GST – Enabling India's Digital Economy***[19]. The attendees included L. Badri Narayana of Lakshmikumaran& Sridharan, a law firm specializing in taxation, DilipChenoy, Secretary General FICCI and Pratik Jain, Partner of PwC LLP. It was the view of the expert panelists that the Government ought to adopt a forward-looking approach while taxing online fantasy sports.

Based on the presented facts, this White Paper offers the following recommendations regarding taxing online fantasy sports operators:

1. That GST be levied only on the Platform Fee/GGR which is received by the operators as consideration for offering their platforms for online fantasy sports and games and not on the Prize Pool/CEA amount contributed by users to participate in the online fantasy sports and games, as per current practice.

2. That the GoM recommends to the GST council to remove any ambiguity for misinterpretation of applicable tax rate for the industry to further avoid unproductive litigation and uncertainty which is affecting FDI, investments and growth of the industry. To this end, a separate line item or HSN code may be introduced, if deemed necessary for

[19] https://www.youtube.com/watch?v=8qWolV6pmXA

the online fantasy sports industry.

3. That the various nuances of online fantasy gaming are understood by policymakers, especially the members comprising the Group of Ministers, as well as State Ministers, before proceeding to impose taxes thereon. These nuances range from how Fantasy Sports platforms operate, what are the cash flows, what is the nature of engagement – whether it is a game of skill or chance

4. That no changes are brought to the existing taxation structure for the online fantasy sports industry as taxing operators too heavily would have the unintended consequences of adversely impacting the growth rate of this industry, shaking investor confidence in this sunshine industry, and reducing revenue inflows for the government.

5. That online fantasy sports should not be equated with betting or gambling as has been held by various High Courts and, most recently, by the Hon'ble Supreme Court of India – which settled that online fantasy sports is a game of skill.

Fantasy sports and online gaming have been on the front-end of innovation and investment in the last few years. Therefore, it is imperative for regulators to take stock of the potential these sectors hold while ensuring their revenues are taxed based on a valuation model that distinguishes between games of skill and games of chance. Therefore, obtaining clarity on these distinctions and therein the valuation models is of the utmost importance to maintain steady flow of investments and revenue. To this end, it is recommended that no changes are made to the current taxation regime for online fantasy sports and that the GoM utilize this opportunity to lend further clarity to the applicable tax rate for the industry.

The group of ministers (GoM) may consider recommending GST council to include 'Fantasy Sports' under HSN heading 998439 to avoid any future confusion with regard to valuation or rate.

Appendix A: Judicial Pronouncements on Regulating Online Fantasy Sports

The terms *game of skill* and *game of chance* have been deliberated upon by the High Courts and by the Supreme Court of India across a multitude of judgments.

The term 'mere skill' was interpreted by the Supreme Court in ***The State of Bombay Vs. R.M.D Chamarbaugwala***[20] as 'games which are predominantly skill based' and has laid down that a substantial amount of exercise of skill is required for a game to be not classified as gambling. A competition to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill. Therefore, a competition success which does not depend on a substantial degree of 'exercise of skill' amounts to gambling. The judicial view with respect to classifying a game as a game of skill or a game of chance has been very strict.

However, it is also possible that games that are legally offered through virtual medium may or may not satisfy the test of *skill versus chance*. Fantasy sports possess an element of skill that predominantly affects the outcome of the games and, as such, is not a gambling activity and are thus classified as games of skill. This facet was examined by the Punjab and Haryana High Court in ***Shri Varun Gumber v Union Territory of Chandigarh and Ors*** which was also upheld by the Supreme Court wherein the Court observed that a person, while participating in a tournament was required to -

a) Use considerable skill, judgment, and discretion while drafting his fantasy sports team.

b) Assess the relative worth all the players available for the draft and evaluate the worth of a player against other players.

c) Abide by the rules while evaluating a player's statistics as well as the strengths and weaknesses of such players.

[20] https://indiankanoon.org/doc/212098/

d) Ensure that the draft did not contain a significant number of players from a single real-world team, and,

e) Evaluate and take into consideration other crucial factors with respect to the game, pitch, and condition of players.

In another important verdict on this issue, the online gaming platform *Dream11* became the subject matter of deliberation. The Bombay High Court in ***Gurdeep Singh Sachar Vs. Union of India 2019-TIOL-2687-HC-MUM-GST*** relied on the observations made by the Punjab and Haryana Court in the Varun Gumber case[21]. A Criminal Public Interest Litigation was filed before the High Court of Bombay wherein it was contended that, Dream 11 was carrying out gambling/betting/wagering in the guise of 'online fantasy sports gaming' in violation of applicable laws; and evading taxes by levying inadequate goods and service tax on such offerings. The Court observed that, unlike betting, winning or losing in fantasy sports was not dependent on any team winning or losing in the real world. The Court further held that the amounts deposited by players would qualify as actionable claims outside the purview of Rule 31A of the CGST Rules, which covered betting, gambling, lottery and horse racing only. It was also observed that the pooled in money did not qualify as consideration and that activity pertaining to such transaction involved the providing of an acknowledgment of receipt of the contributed amount. Hence the Court held that such activity did not constitute supply of goods or supply of service and therefore was outside the purview of GST. The High Court also upheld the classification of online sports and games under the GST HSN heading 998439 and held that the GST was correctly payable @ 18% on the Platform Fee retained by the platform offering the game.

The Hon'ble High Court of Rajasthan in the case of ***Chandresh Sankhla v. The State of Rajasthan*** held that in view of the orders already passed by the Hon'ble High Court of Punjab & Haryana and the High Court of Bombay, the issue relating to allegations of gambling/betting against Dream11 platform is no more *res integra*.

[21] https://taxindiaonline.com/RC2/caseLawDet.php?QoPmnXvZ=MTU0NTM0

Further, the High Court of Rajasthan in *Ravindra Singh Chaudhary Vs. Union of India &ors* had observed that the skill of the participant determines the result of the game having predominant influence on the outcome of the fantasy game[22]. Whether any particular team in the real-world match wins or loses, is also immaterial as the selection of virtual team by the participant involves choosing players from both the teams playing in the real world. It is also clear that offering Dream11's format of fantasy sports involves substantial skills and is therefore a legitimate business activity not amounting to wagering and entitled to protection under Article 19(1)(g) of the Constitution. The Court also observed that the users are not gambling on the outcome of any game, since it is immaterial if any particular team in the real-world match wins or loses as it is wholly dependent on performance of each player in the team . Considering these factors and the presence of industry regulators that place checks and balances on operators, the Court arrived at an independent view that fantasy sports is a game of skill.

Most notably, recently, the High Court of Rajasthan in the case Fantasy Sports ***aahilNiwaya v. The State of Rajasthan*** held that offering of online fantasy sports offered in accordance with Charter of Federation of Indian Fantasy Sports is a legitimate business activity entitled to protection under Article 19(1)(g) of the Constitution of India and any action taken by government in prohibiting such activity would be opposed to Article 14 and Article 19(1)(g) of the Constitution of India.

On August 3, 2021, the Madras High Court struck down part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 which imposed a ban on playing of games such as rummy and poker on cyberspace with stakes. Section 11 of the impugned legislation also banned games of 'mere skill' if such games were played for wager, bet, money or other stakes – thereby including online fantasy sports within its ambit. The petitioners contended that the impugned legislation – by prohibiting even games of skill where any prize or stake was involved – was violative of Article 19(1)(g) of the Constitution, which secures the right to practice any profession or to carry out any occupation, trade or business. In its judgment, the

[22] https://indiankanoon.org/doc/175923288/#:~:text=Union%20of%20India%20%26%20Ors.%2C.of%20this%20Court%20in%20D.B.

bench relied on the Madras High Court's previous judgment in ***Dr. K.R. Lakshmanan Vs. State of Tamil Nadu*** wherein it was held that a game of skill may necessarily involve an element of chance, but the success therein would depend "principally upon the superior knowledge, training, attention, experience, and adroitness of the player. Further, it held that in a game of skill, the exercise of skill can overpower the chance element involved in that activity such that the better skilled would prevail more often than not.

The Hon'ble Supreme Court of India on July 30, 2021, dismissed a Special Leave Petition that alleged that Dream11's format of fantasy sports amounts to gambling, wagering, and betting – therefore not making it a game of skill. In its judgment, the bench noted that the matter of whether online fantasy sports is a game of skill is *non res integra* – and is, therefore, settled. In doing so, the Court reaffirmed the judgments passed by the Punjab & Haryana High Court, the Bombay High Court, and upheld the judgment passed by the Rajasthan High Court, where the legality of online fantasy sports as a 'game of skill' and not gambling was sustained.

Therefore, from a collective reading of the aforementioned judgments, it is evident that the legality of online fantasy sports is a settled matter. Several leading academic institutions, including Indian Institute of Management, Bangalore (IIM-B), have conducted empirical studies[23] to affirm that **fantasy sports are games of skill.** Researchers at Massachusetts Institute of Technology (MIT) and Columbia University contrasted data gathered from fantasy cricket and basketball platforms against data collected from the stock market and concluded that fantasy sports participants demonstrate a higher degree of skill than mutual fund managers who manage stock portfolios[24].

[23] https://indianexpress.com/article/technology/tech-news-technology/fantasy-sport-dream-11-iimb-certesian-study-6165065/
[24] https://devavrat.mit.edu/wp-content/uploads/2020/08/report_skill.pdf

Appendix B: International Practices

To evaluate the efficiency and effectiveness of the tax laws pertaining to online fantasy sports and games in India, it is essential to compare the experiences of other countries in regulating taxes in the Fantasy Sports industry. Comparing the experience of other countries in regulating their online markets is a useful tool in evaluating the effectiveness of regulations in India.

However, it should be noted that there are several other variables affecting the performance of gaming markets aside from regulatory changes and tax. The effects of these other factors such as the macroeconomic environment, shifting customer demographics and attitudes, among others, cannot always be reliably stripped out in evaluating the impact of regulatory change.

I. United Kingdom

The UK's market has experienced an annual GGR growth of 80% since 2002-2008, the reason being a change in the gaming tax system in October 2001 from a 6.75% on stakes to 15% on GGR. Thereby, the market in the UK is one of the most open online gaming markets across Europe. High growth rate since 2001 indicated an effective online regulation process that opened the market and stimulated a high level of absorption, which would minimize the size of the unregulated market.

II. USA

Fantasy sports are legal under a federal law exemption whereby fantasy sports are considered a game of skill. Fantasy sports are taxed differently in different states; however, fantasy sports are taxed uniformly on GGR, only the tax rate varies. There is no federal tax on fantasy sports.

The tax aspects pertaining to online fantasy sports and games adopted by various other countries have been summarized as tabulated below –

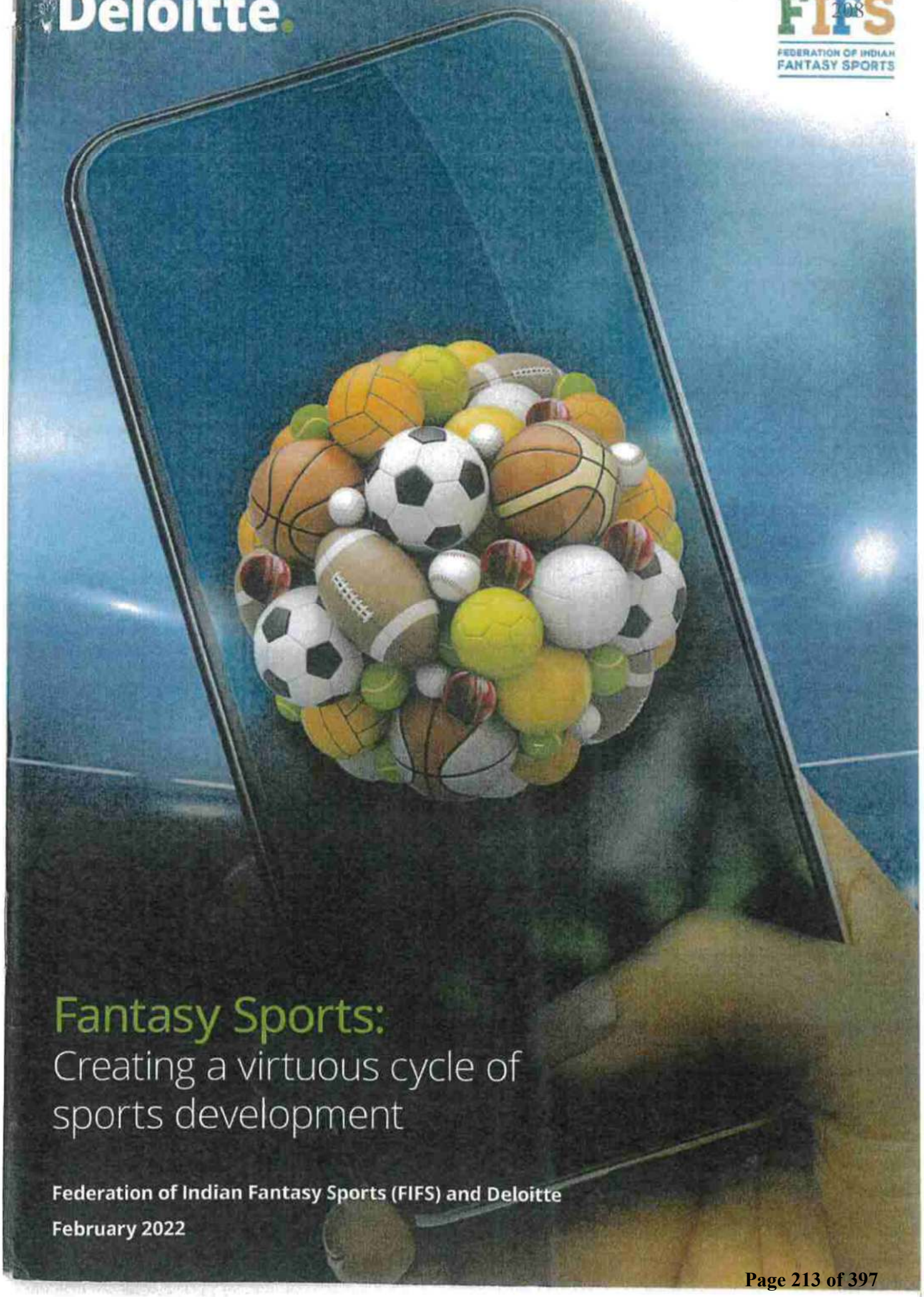
Country	Tax Base	Tax Rate
UK	GGR	15%
Australia	GGR	10%
Germany	GGR	19%
Czech Republic	GGR	6-20%
Belgium	GGR	11-15%
Italy	GGR	20%
Slovakia	GGR	27%
Estonia	GGR	5%
Spain	GGR	25%
Greece	GGR	30%
Denmark	GGR	20%
France	GGR	37%
Sweden	GGR	18%
Portugal	Stake	25%
Alderney	GGR	GBP 35k to 500 k / year
Isle of Man	GGR	GBP 35 k/year + 1.5% on GGR
US: Pennsylvania	GGR	16%
US: New Jersey	GGR	7.9%
US : Nevada	GGR	6.75%
US- Illinois	GGR	23.5%
US: Mississippi	GGR	11.30%
US: Louisiana	GGR	21.70%
US: Colorado	GGR	15.20%
US: Missouri	GGR	27.20%
US: Iowa	GGR	16.20%
US: South Dakota	GGR	8.80%

Country	Tax Base	Tax Rate
Malaysia	GGR	8%
Ireland	Stake	1%
Romania	Stake	1.5 % to 5%
Poland	Stake	12%

****

Deloitte.

FIFS
FEDERATION OF INDIAN FANTASY SPORTS



Fantasy Sports:
Creating a virtuous cycle of sports development

Federation of Indian Fantasy Sports (FIFS) and Deloitte

February 2022

Content

Glossary

AI	Artificial Intelligence
APAC	Asia Pacific
Bn	Billion
CAGR	Compound Annual Growth Rate
CEA	Contest Entry Amount
Cr/cr	Crore (1 crore = 10 million)
FDI	Foreign Direct Investment
FIFA	International Federation of Association Football
FIFS	Federation of Indian Fantasy Sports
FS	Fantasy Sports
FY	Fiscal Year
GB	Gigabyte
GDP	Gross Domestic Product
GST	Goods and Services Tax
INR	Indian Rupee
IPL	Indian Premier League
KYC	Know Your Customer
ML	Machine Learning
Mn	Million

NCCS	New Consumer Classification System
NFL	National Football League
NITI	National Institution for Transforming India
NPCI	National Payments Corporation of India
FS	Fantasy Sports
FSP	Fantasy Sports Platform
OTT	Over the Top
PPI	Prepaid Payment Instrument
SOT	Stars of Tomorrow
TRP	Target Rating Point for Television
TV	Television
U.K.	United Kingdom
U.S./U.S.A.	United States of America
UPI	Unified Payments Interface
US$/USD	United States Dollar
VAT	Value Added Tax
WLA'S	White Label ATM's
YoY	Year on Year

Note on scope, terminology, and units used

- "Fantasy Sports" in this report refers to Fantasy Sports (FS), which is offered by Fantasy Sports Platforms (FSPs)
- "Operator" in this report refers to Fantasy Sports Platforms (FSPs) or Fantasy Sports (FS) Operators
- Market size in the context of FS used in this report refers to the total Contest Entry Amount (CEA) for the FS industry
- The "Operator Revenue" is the platform fee (typically between 10-20 percent of the CEA) which is the gross consideration the operator receives for providing the platform services to the users.
- "Sporting Event" in this report may refer to a match, a tournament, or a season of a given sport
- This report may carry some numbers in the lakh/crore system, which is prevalent in India, versus the million/billion system. Please note that:
  - 1 crore (cr) = 10 million
  - 1 lakh (or lac/ lakh) = 0.1 million
- Years in this report refer to financial years ended 31 March, unless specified otherwise. This is represented as FY20xx/ fyxx for year 20xx (e.g., FY2020 or FY20, for the year ended 31 March 2020)
- US$/USD 1 = INR 75 has been used in this report for any INR to USD conversions, unless specified otherwise

Foreword

Last year, India recorded its best-ever performance in the Olympic and Paralympic Games, winning its first ever track-and-field gold medal and a total of seven medals in six disciplines at the Olympic, and 19 medals (including 5 Gold, 8 Silver and 6 Bronze) at the Paralympic. India, quite evidently, is starting to improve its Olympic performance and the hope is that eventually, the medal tally at the Olympics would concur with its increasingly important position in the world. While, in recent years, there has been a shift in the emphasis on sporting infrastructure development, there is also a need to further imbibe a culture of sports and encourage the growth of the sporting sector in its entirety.

Rewind back to India's gutsy victory at the 1983 Cricket World Cup. At that time, television coverage in India was in its infancy, and not many would have followed the World Cup. Post that win, the television industry improved its reach and offerings and took cricket to the masses. This played a pivotal role in creating a culture of cricket in the country. Today, India is a dominant force in the cricketing world. Much like the 1983 Indian Cricket Team, our valiant athletes have put up an exhilarating performance at the Tokyo 2020 Olympics and sparked the collective imagination of the country. In today's digital age, Fantasy Sports could be the stimulant, much like television was for cricket in India, to create a broad-based sporting culture.

Fantasy Sports are an extension of real-life sporting events. The competition is based on picking real-life players from various teams, watching their real-life on-field performance amass stats such as goals or runs, and turning them into points. This arouses the user's interest in the sport and its players, further augmenting the engagement and intensifying the reach and appreciation of the sport across the country. The digital nature of Fantasy Sports platforms lends itself to creating multi-sport ecosystems, which could be valuable in a country with a population of 130 crore, trying to build a sports culture, right from the grassroots.

Fantasy Sports is creating a virtuous cycle of investments in sports in the country. It is promoting fan engagement and appreciation of various indigenous and international sports, investments in physical sports development, and the promotion of sports commerce across the ecosystem through partnerships, sponsorships, and CSR.

Beyond its impact on core underlying sports in the country, Fantasy Sports is emerging as a key driver for developing future-ready skills in fields such as digital, AI/ML, cloud, and analytics and has had a multiplier effect on the growth of other ancillary sectors. Further, the impressive growth of this sector has been attracting investments (and foreign direct investment) boosting economic growth. The Fantasy Sports industry today, is a shining example of the burgeoning Indian start-up ecosystem. With capital pouring in and India finding two FS unicorns in Dream11 and MPL, the sector is inspiring more entrepreneurs to see FS as a scalable business proposition.

India has already made significant strides in Fantasy Sports to become the largest FS market in the world with 200+ Indian operator companies and 13 crore Indian users, surpassing USA's 50+ year-old Fantasy Sports market.[1] Fantasy Sports companies have started making a mark, for instance, by sponsoring the Indian Premier League (IPL), the Indian Olympic team in 2020, and the Commonwealth Games in 2022. If all stakeholders make a concerted effort, this sunrise sector could see a world-leading model emerge. An "Aatma-Nirbhar" effort in "Digital India", in the true spirit of the term.

Executive summary

The Indian Fantasy Sports (FS) Industry has experienced significant growth over the past few years. With a market size of over INR 34,000 crore, buoyed by strategic investments, the industry now caters to over 13 crore registered users. Over a span of five years, the industry footprint has grown to become the largest in the world and customer acquisition is only ramping up in our sports obsessed nation.

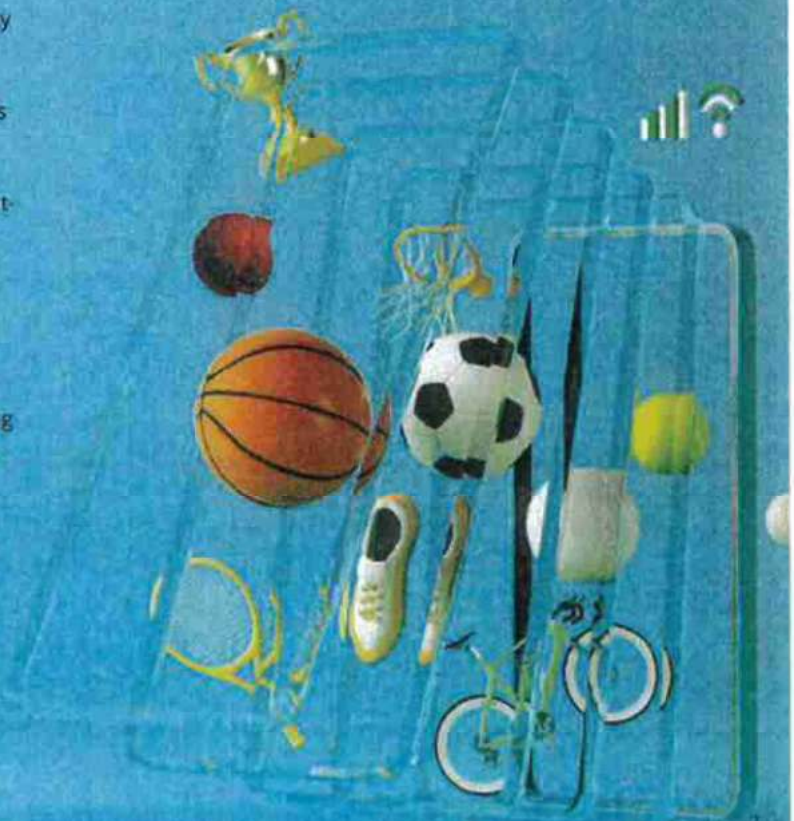
As low data costs and increased smartphone penetration enhance the accessibility of the Fantasy Sports platforms, the variety of sporting events it caters to is also expanding. Sports leagues in Cricket, Football, and Kabaddi have brought in fans in droves and the subsequent increased viewership has been advantageous to the FS industry. FS platforms have reciprocated by elevating the fan experience from mere spectatorship in the stands or in front of the TV to that of an engaged team manager, making strategic decisions with the leverage of real-world sports knowledge to create the best possible virtual team.

FS contests have introduced sports fans to sporting events that would not have traditionally gained popularity in India. Fans are now watching sports such as kabaddi, hockey, women's football, and cricket, and the exposure to such events on FS platforms is restructuring the sports appetite and viewership of sports fans in the country. On the other hand, live-streaming capabilities and the availability of sporting content across traditional and next-gen platforms have further increased user engagement across FS platforms. Consistent fan engagement, therefore, is leading to greater viewership and TRP, thereby attracting more sponsorships and the overall development of the sports infrastructure.

As the industry matures, FS operators are actively seeking out opportunities to enhance this symbiotic relationship and contribute to the sporting industry. While their digital footprint is helping create future-ready jobs in AI, ML, and analytics, contribution to the overall expansion of both, Indian sports and the digital ecosystem is a testament to the Atmanirbhar Bharat and Digital India philosophy.

Through partnerships, sporting leagues, sponsorships, and brand ambassadors, FS operators have become an integral part of the sports industry. By investments in sports infrastructure, they are supporting the adoption of sports and increasing viewership of regional sports leagues and tournaments. Through initiatives aimed at supporting athletes and sports coaches, the FS industry is enabling a rich multi-sport ecosystem in the country.

The FS industry is also embracing order and structure to ensure that the rapid industry growth is tempered with a mature approach to governance. Through self-regulation, FS operators have built frameworks to ensure that the growth in the industry is sustained by ethical and transparent practices enforced across all its members. The proposed inclusion of a stable and light-touch regulatory framework, as recommended by NITI Aayog, will further cement the ability of FS operators to structure the narrative around Fantasy Sports operations and contribute to the development of the sporting industry in India.



Fantasy Sports: India's New Sunshine Sector

Market size*
INR 34,600 Cr

CAGR (medium term)**
38%

Market size projection***
INR 1,65,000 Cr

Indian Fantasy Sports Market

FSPs operator revenue*
INR 5,200 Cr

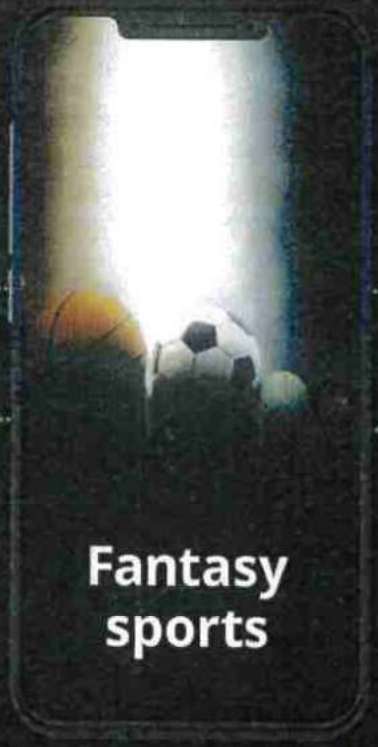
GST generated by FS operators*
INR 930 Cr

Indirect revenue*
INR 5,500 Cr

Forex through FDI**
INR 10,000 Cr

Projected Cumulative Tax Contribution***
INR 24,300 Cr

The FS industry's economic impact reveals itself through several metrics[1]



The Fantasy Sports user base grew at a CAGR of 130% between 2016 and 2021

There are over **13 Cr** Fantasy Sports users across India

80% Fantasy Sports users **participate in free contests**

Smartphone penetration at 42% and low-cost mobile data leads to **high subscriber rates**

60% FS users **started watching more sports than before** because Fantasy Sports result in deeper and more active engagement

The average Contest Entry Amount (CEA) across FS platforms is INR 35 and more than 50% of the users win back their participation fees or more

85% revenue is brought in through cricket

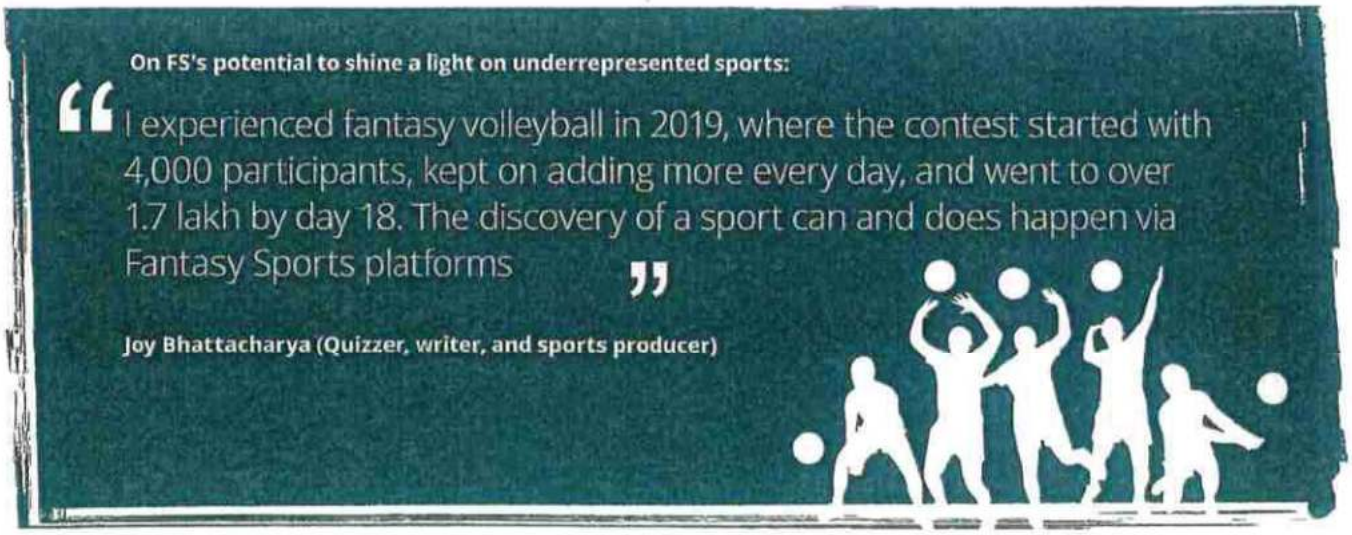
50% of transactions on FS platforms initiated from **Tier-2 and Tier-3 cities**

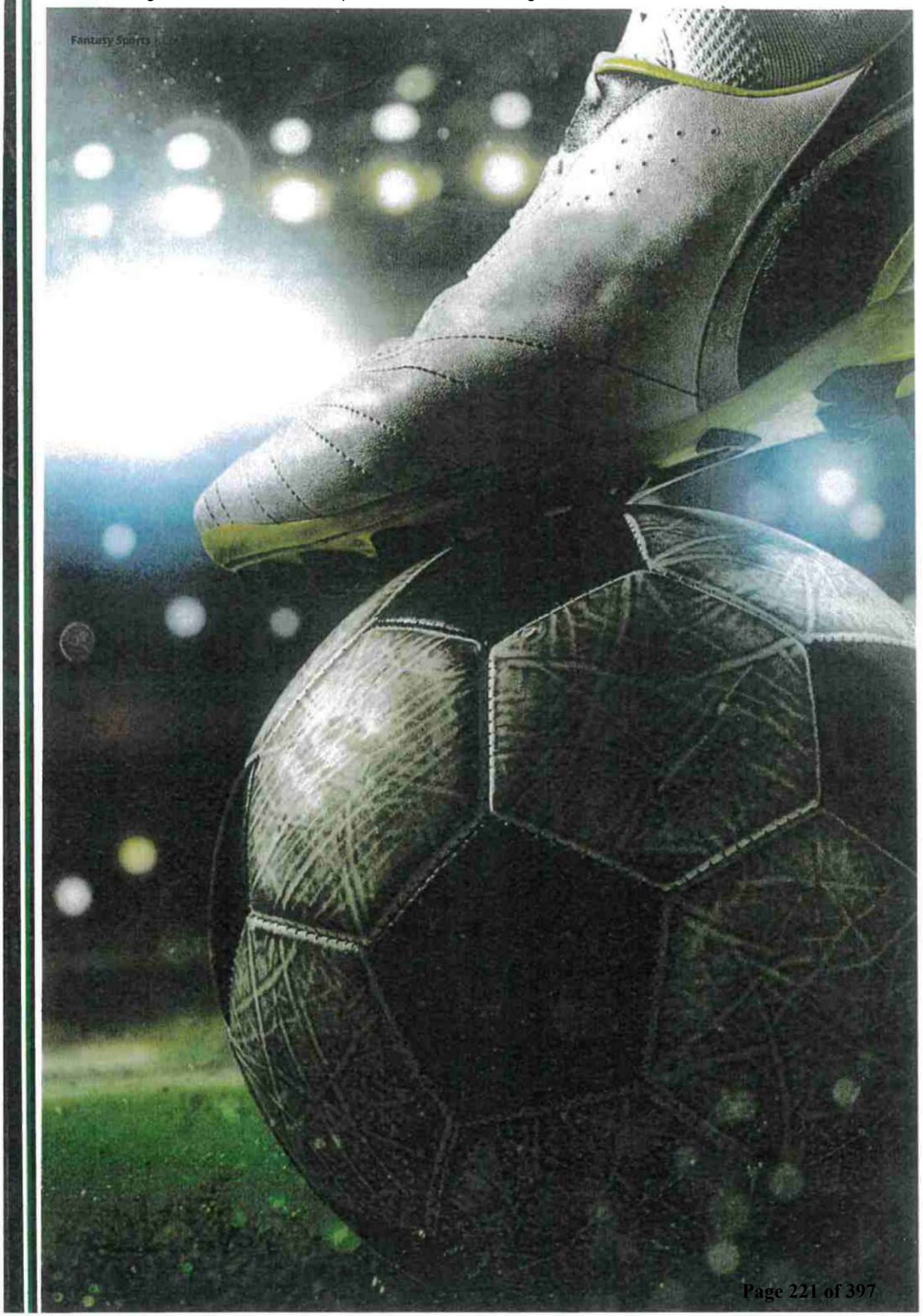
Key user demographic falls in the **25-40-year** bracket (which is **59%** of the total user base)

*FY21 FIFS estimate basis CEA, **FY21-FY27 FIFS projection, ***FY25 FIFS projection basis CEA
*FY21 FIFS estimate, **FIFS estimates until 2021, ***FY25 FIFS projection
Market size and revenue projections could be materially impacted by regulatory actions that result in adverse or favourable effect on the performance of the Indian Fantasy Sports Market

Beyond the quantitative impact, FS can play a key role in seeding a culture of sports in India

Engaging sports fans through Fantasy Sports platforms



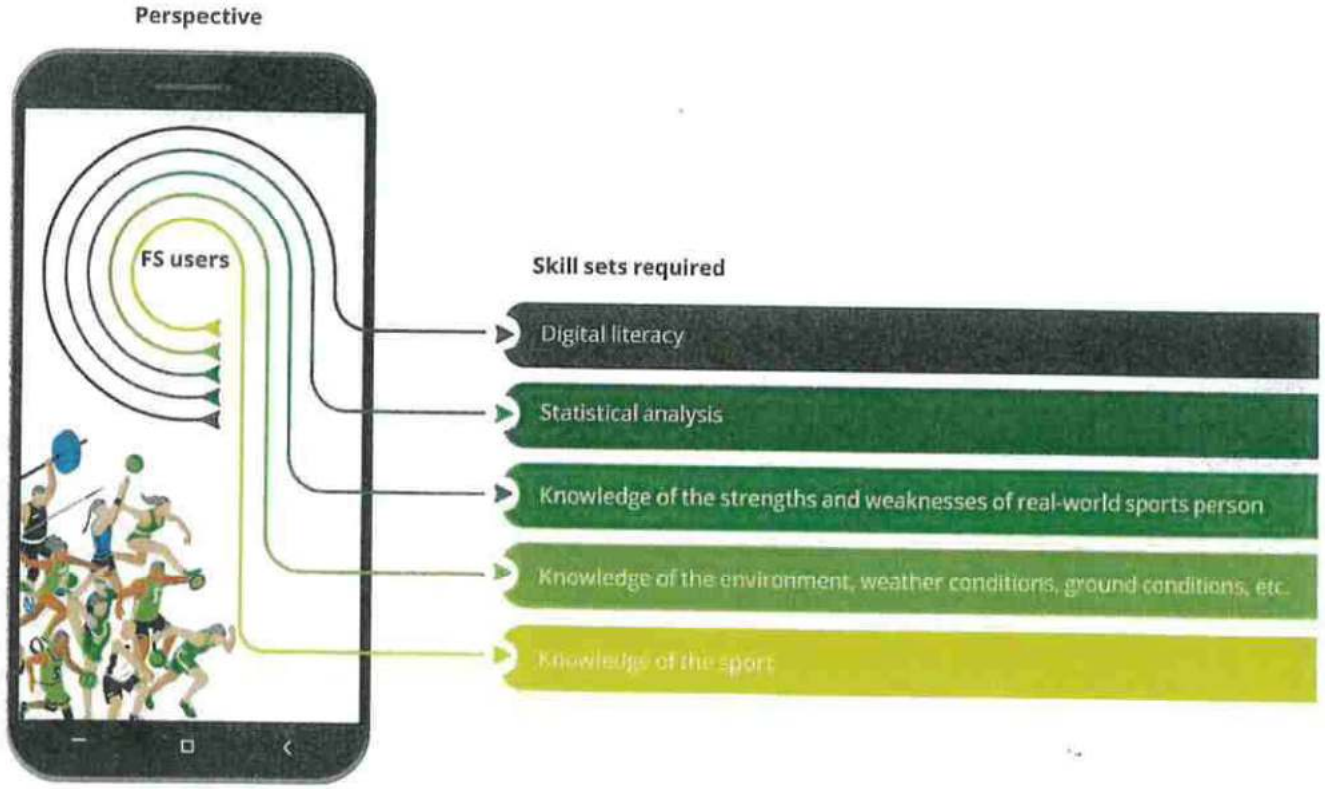

Fantasy Sports

Defining Fantasy Sports (FS)

What are Fantasy Sports?

Fantasy Sports are digital sports engagement platforms, based entirely on real-life sports matches, where users build virtual teams with proxies of real players participating in an upcoming match (or match-day) and compete on real-world statistical performances of these players, based on one complete officially sanctioned sports match. This allows users to emulate the role of a coach or a manager of a team, with the power to drop, recruit, or trade a player of their choice. The teams are frozen, and the changes are locked before a match kicks-off. For some, it is about deeper engagement with the sports, beyond viewership, while for others, it is about the competition and strategy that it involves.

FS offers a unique value proposition and is distinct, as it is based on real-life sporting events, offers meaningful engagement with sports, and there is no simulated gameplay involved. It is, therefore, not surprising that the structural boundaries are indistinguishable to the common man and there is often confusion outside of the industry about what FS really is. It comes down to the conventions of naming, generational differences, and etymology in modern times.



How to participate in Fantasy Sports?

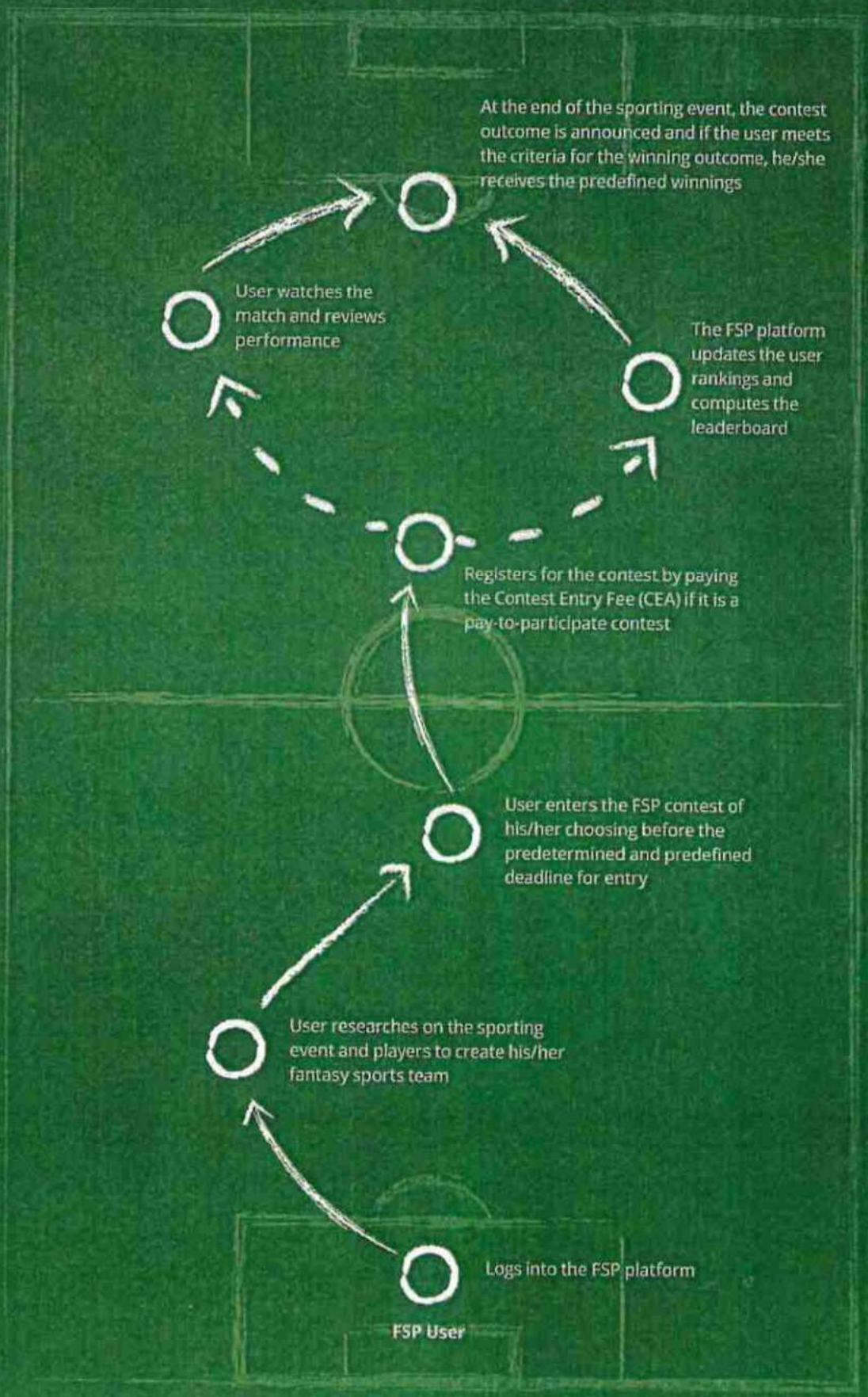
Fantasy Sports allows users to create virtual teams with real-life sports players participating in a real-world sporting event. They then compete in a competition (a contest or a virtual mini competition of their own) where the team's performance is based on the actual statistical performance of the player from across real sporting events for the given sports match. Users are then ranked based on the performance of their virtual teams during the sports match or the tournament.

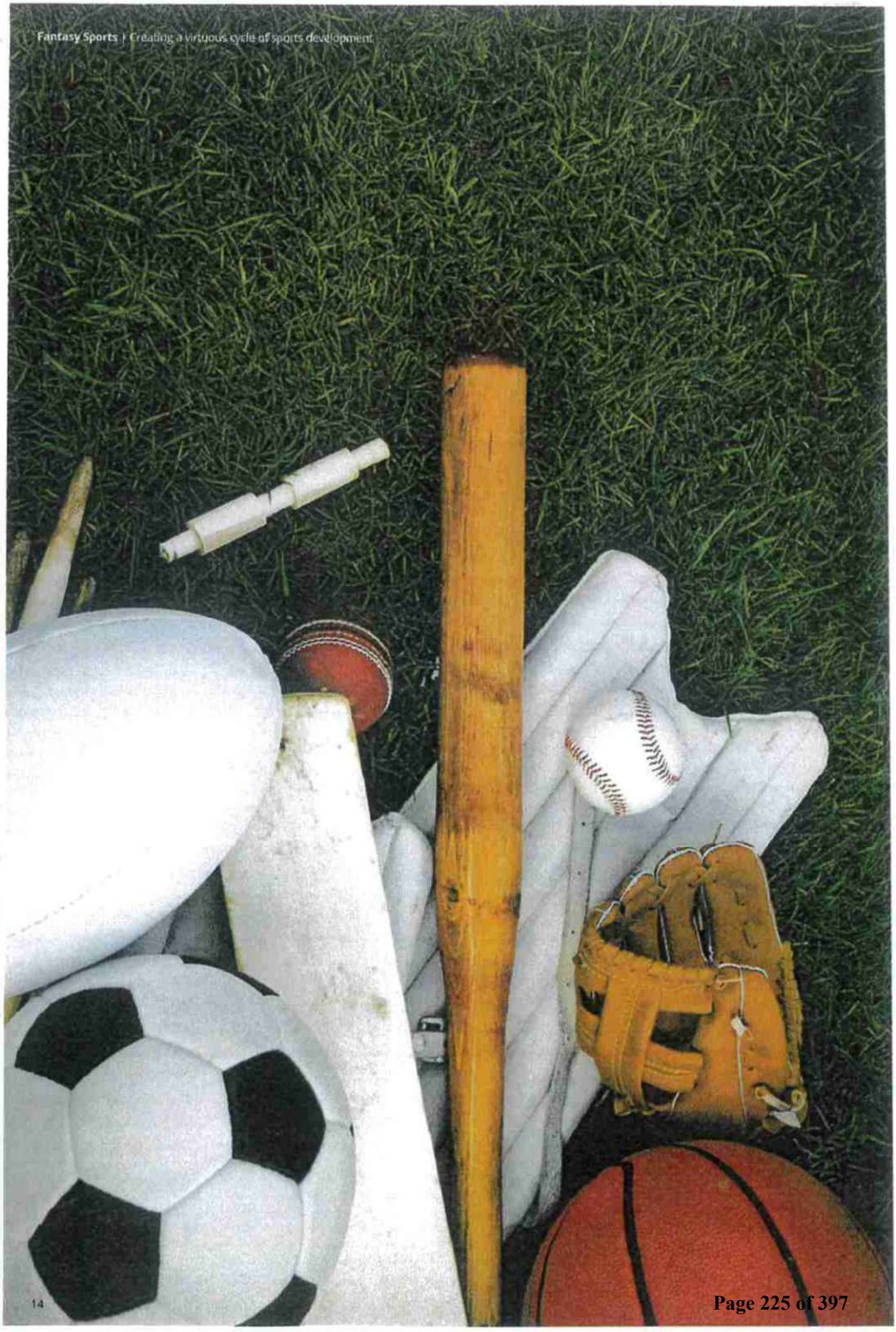
Users, to create their virtual teams, operate with a limited virtual budget. The allocated virtual spend capacity per team and virtual price tags on players form boundary conditions for building the team, where top-ranked players have high price-tags attached to them and the value varies based on the player's real-world rating/ rankings. To add another layer of complexity, certain conditions are imposed such as prohibiting selection of more than certain number of players from the same team, or position or profile.

Users win points based on how well the selected players perform during the real-life sports event. The eventual outcome of the match might not be the focus for users, but what matters is the individual performance of several players from the participating teams in one complete match. Performance is often indicated by parameters such as runs scored or goals assisted. The user, in effect, takes the virtual role of a sports team manager to build the most effective team for a given sporting event. The virtual team's success is based entirely on the actual performances of the real-life players in each complete match. The user's knowledge and adroitness towards the sport becomes key to selecting the fantasy/virtual team.

While enrolling for a contest to compete in, the users (as on most platforms) would have an option to choose between a free and a paid contest. A user will be permitted to modify the team until a cut-off time (typically before the start of the actual event). For a pay-to-participate contest, a portion of the Contest Entry Amount (CEA), typically 10 to 20 percent, goes towards the FS platform fee, while the remainder makes up the prize pool.

Illustration: A typical working of an FS contest



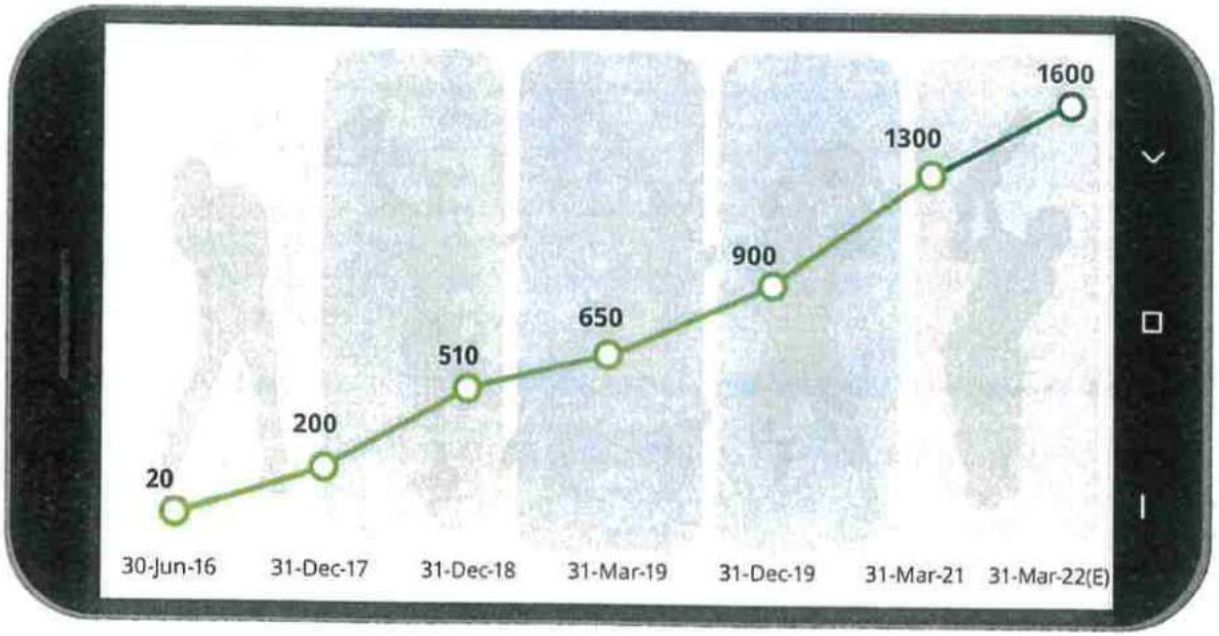

Fantasy Sports | Creating a virtuous cycle of sports development

Industry scale, size, and the market landscape

Globally, the Fantasy Sports industry has been showing healthy growth, with India being the fastest-growing FS markets with the largest user base at 13 crore, which is further expected to grow at a CAGR of 32 percent in the coming years. The country has become a high-growth, in-focus market due to a large tech-savvy millennial population base, growing affiliation with sports, rapid smartphone penetration, and the availability of low-cost mobile data; and is projected to grow from INR 34,600 crore in FY21 to an estimated INR 1,65,000 crore by FY25, per FIFS estimates. [3] [1] However, the market size and revenue projections could be materially affected by any potential regulatory actions that result in adverse or favourable effect on the performance of the Indian Fantasy Sports Market.

Further, the growth in the Indian FS industry is expected to be driven by advancing sporting infrastructure and the popularity of sporting leagues across the country. This growth is also aided by several key environmental factors such as increased media digitisation, simplified digital payment platforms, increased adoption of affordable smartphones, and significant global investments in high-speed internet infrastructure.

Fantasy Sports user base growth (actuals and projection) in India (lakh) [1]



Multiple court rulings on the legality of Fantasy Sports offered by FSPs, their associations with sporting bodies, sponsorship of major sporting events, and recruitment of brand ambassadors of regional and international repute have all helped the FS industry gain traction and expand its user base. Starting at approximately 20 lakh registered users in 2016, the Indian FS user base has grown to well over 13 crore in 2021. In contrast, the Fantasy Sports industry across the US and Canada is estimated to have grown from about 5 lakh users in 1988 to 5.9 crore users in 2017, translating to a CAGR of 14 percent, over the course of 29 years. [4] [5]

The rapid growth in registered users has further attracted established companies and start-ups alike to invest and innovate in this space. There are over 200 Fantasy Sports operators in India, and their potential to attract users and generate revenue have attracted significant investments from domestic and foreign investment firms.

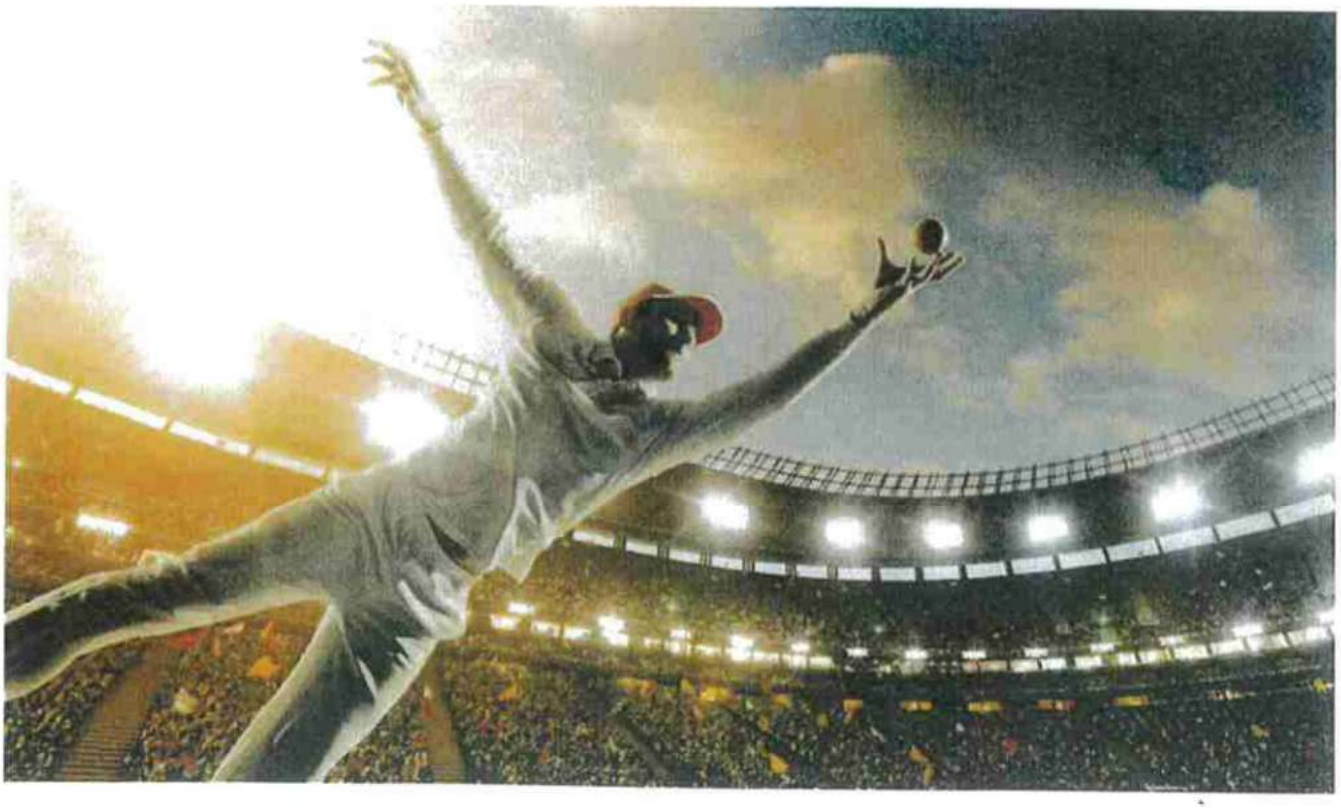
The low-hanging fruit for FS operators in India unsurprisingly came from cricket. The supply of "raw material" has also seen growth, with an increase in the number of events the Indian cricket team participates in. The IPL, which brings in several cricket matches in a short window, has been a key growth driver for Fantasy Sports in India. The success of the IPL has also spawned multiple T20 leagues across the globe such as the Big Bash League in Australia, the Caribbean Premier League, and the Super Smash League in New Zealand. The emergence of such tournaments ensures that FS users have multiple opportunities to participate in Fantasy Sports contests all year long. Cricket, today, accounts for over 85 percent of the total market value of FSPs [6].

India Fantasy Sports market share, by sports type [7]

Nevertheless, Indian FSPs have endeavoured to diversify their portfolio to include sports such as football, hockey, kabaddi, baseball, basketball, rugby, and volleyball. We note that OSFPs could play a key role in creating a broad-based sporting culture in the country, which goes beyond cricket and to some extent, football. Cricket, which generated INR 25,000 crore of CEA for FSPs in FY21 and is touted to reach INR 73,000 crore by FY25, might see its share going to other sports, but will continue to grow at CAGR 30% percent over the next four years and remain the highest contributor. [3]

Cricket, football, kabaddi, and hockey, together, account for over 98 percent of the total FS revenue and remain to be the staple offering of most FSPs in India. However, COVID-19 and its impact on live sports have steered FSPs and users to explore alternative sports globally, such as baseball.

Fantasy Sports user spread across sports [1]



Indian Fantasy Sports market (actuals and projection) for non-cricket sports (INR crore) [1]

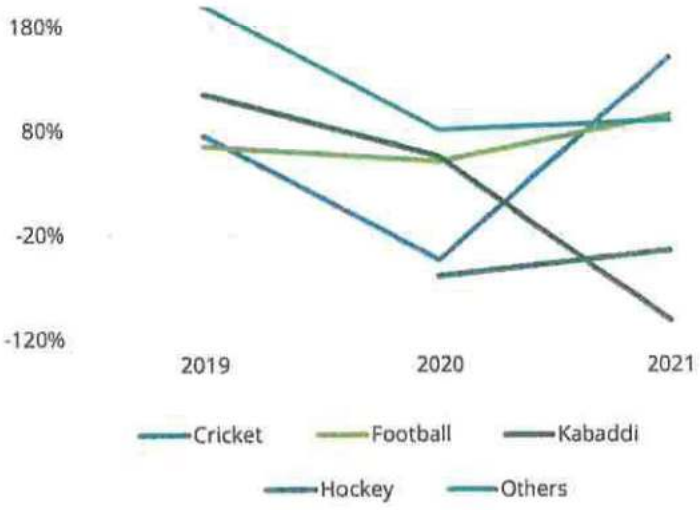
	2019	2020	2021	2022(E)	2023(E)	2024(E)	2025(E)
Football	376	1,043	2,257	4,098	6,312	9,108	12,188
Hockey	400	1,099	2,352	4,228	6,448	9,217	12,229
Basketball	41	107	217	369	530	717	896
Baseball	3	6	12	19	28	36	42
Others	73	183	359	584	803	1,027	1,210

Note: Market size and revenue projections could be materially impacted by regulatory actions that result in adverse or favourable effect on the performance of the Indian Fantasy Sports Market

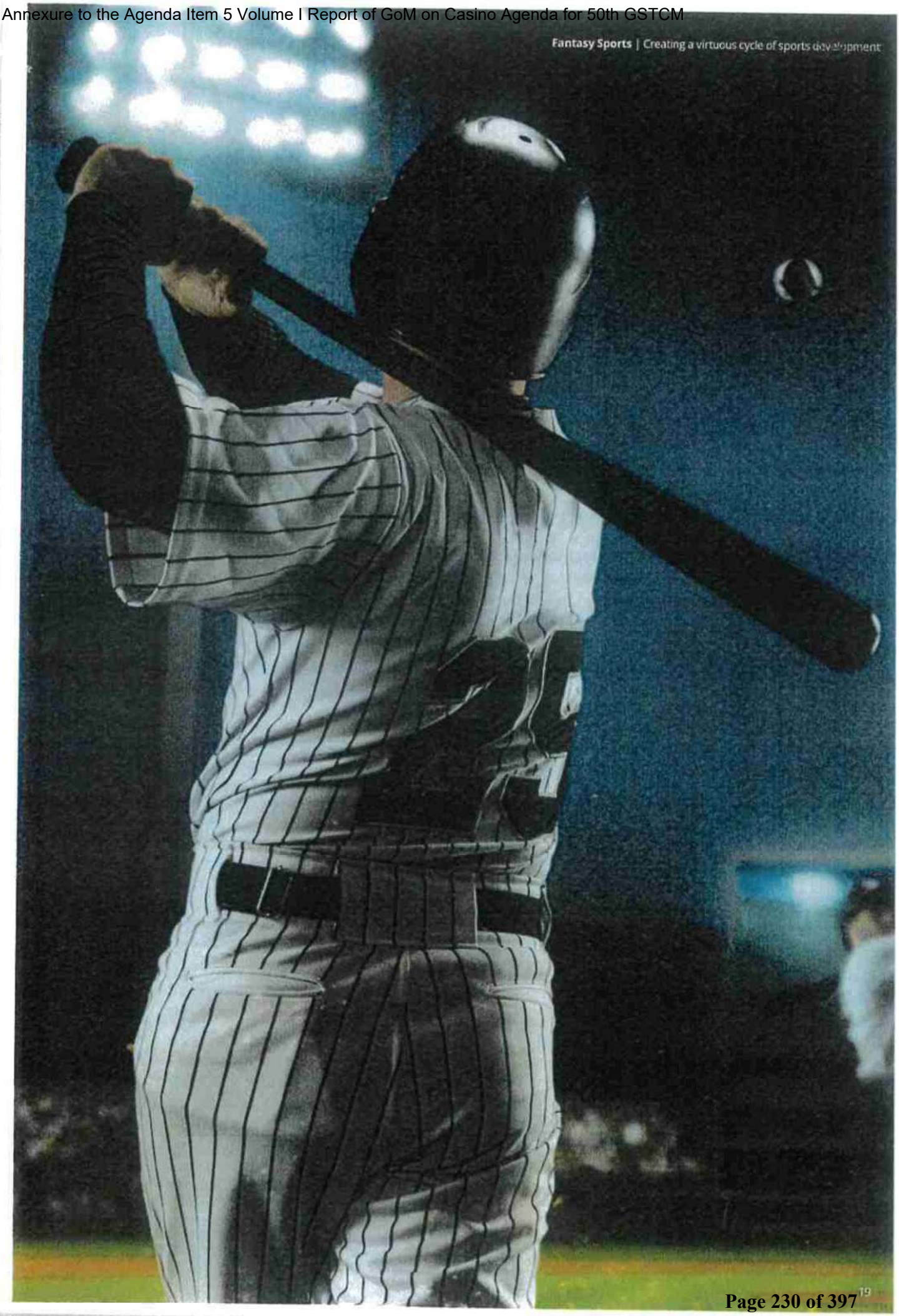
While COVID-19 continues to significantly impact sporting events and the entertainment sector as a whole, there is still an appetite for sporting events amongst fans. Multiple sporting events and tournaments, including the IPL in 2021, have attempted to conduct sporting events behind closed doors and with stringent protocols to ensure the health and safety of the players and staff. This has shown the resilience of the industry and strongly indicates that there will continue to be suitable sporting events and sufficient coverage via traditional and digital channels, such as OTT platforms. This bodes well for the FS industry as well. The FS industry base in India grew by over 20 lakh users between May and June 2021, and this growth can be linked to Phase 1 of IPL 2021. [1]

This enormous growth induced curiosity and interest across media, resulting in various Fantasy Sports YouTube channels, vlogs, TV shows, newspaper columns, blogs, and forums where "experts" analysed performances and upcoming trends. Even though the whole phenomenon of Fantasy Sports started outside of India, major events such as the FIFA World Cup, Champions League, and particularly the Indian Premier League increased interest amongst Indian sports fans.

YoY change in total active users across different sports categories [1]



Note: The de-growth can be attributed to postponement of the IPL in 2019-20 and cancellation of Pro Kabaddi and Hockey India Leagues due to COVID-19

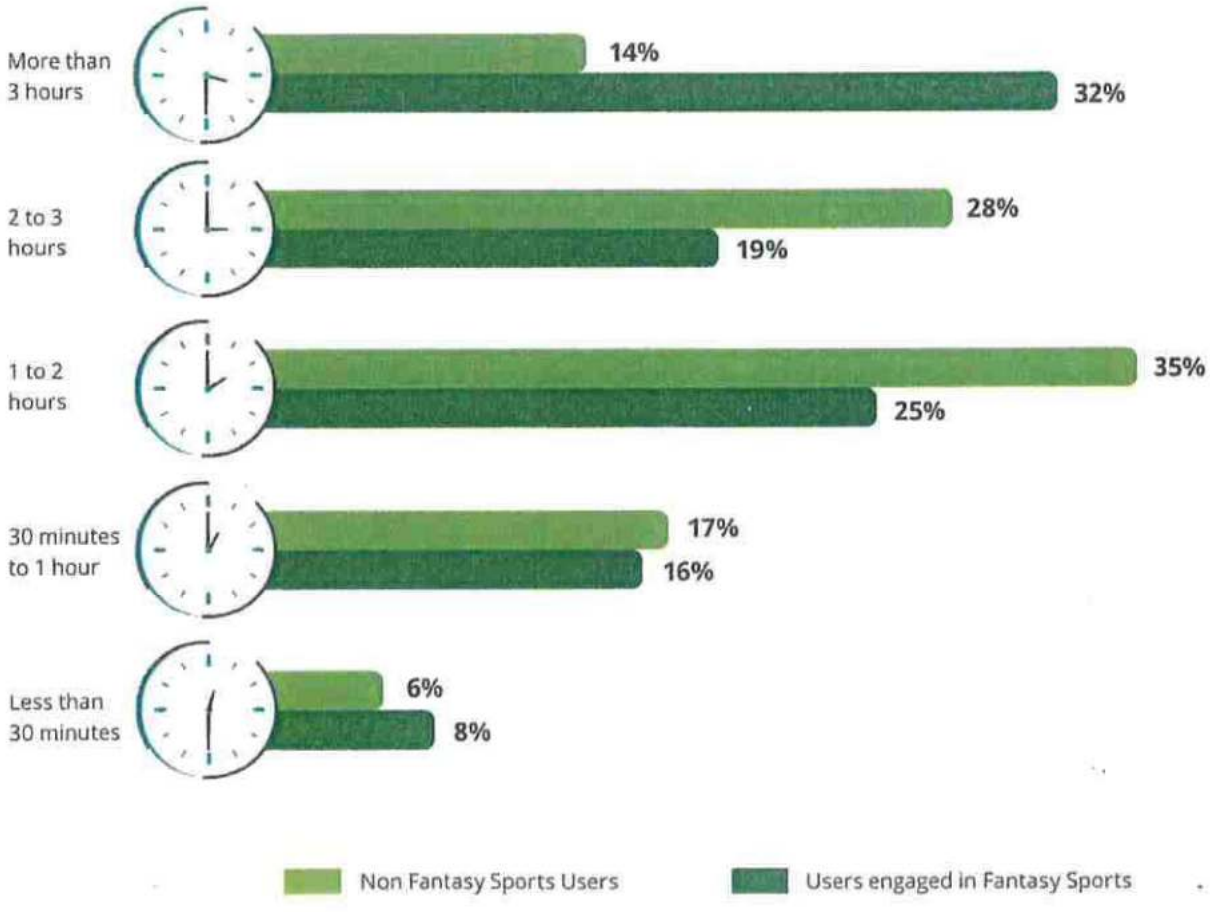


Key Growth Drivers of The Industry

Growing popularity of sports and the rise of leagues

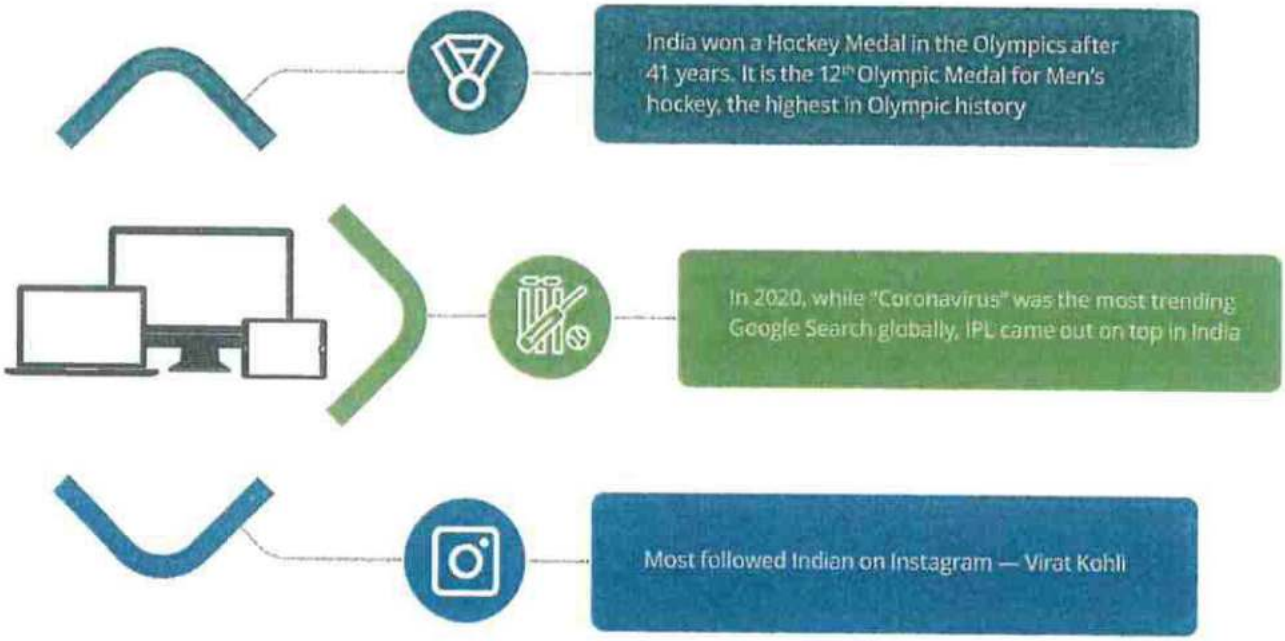
There are strong and organic synergies between live sports and Fantasy Sports. Sport viewers have a high propensity to engage and actively participate in fantasy sporting events, as it augments their viewing experience. Results of a study released by the FIFS indicate that 60 percent of Fantasy Sports users follow or watch sports more when engaged in Fantasy Sports. Currently, there are 13 crore users who engage in Fantasy Sports, while there are 80 crore viewers of sports content suggesting more than 85 percent viewers are still potential users for the FS industry to seek future growth. [1][9]

Time spent watching a match [10]



Cricket dominates in India, representing 79 percent of all sports channel viewership on television (2019) [11]. Women's cricket has also gained popularity; the first 12 matches of the 2020 ICC Women's Twenty20 World Cup generated 4.1 crore viewing hours in India, a 213 percent increase from 2018. [12] While India may be a cricket-loving nation, other sports have been gaining momentum over the years. Since Pro Kabaddi League's inception in 2014, Kabaddi has become the second-highest, sports channel viewership (2019). Football viewership also has been breaking records, from Euro 2020 viewership outdoing the FIFA world cup 2018 to La Liga's 72 percent increase in viewership since the restart, post COVID-19. [13]

Illustration: India's obsession with sports [14], [15], [16], [17]



There are numerous reasons contributing to the growth in sports' popularity in India. Firstly, the "entertainment" quotient of sports has been rising. The quality of broadcast, production, celebrity endorsement, and branding has improved manifold through franchise leagues in sports such as football, kabaddi, hockey, and now even kho-kho. There is also an emphasis on fan engagement and access through the introduction of vernacular commentary. Sporting events today are accessible to anybody, anywhere, with a smartphone and an internet connection. Flexibility has also increased with OTT platforms, allowing users to watch content on a second (small) screen or while on-the-move.

The growth of social media has provided a complementary infrastructure for the growth of sports popularity and in the evolution of fans, from passive viewers to active and engaged participants. Social media, FS, and sports content platforms have become hotspots for fan communities to come together and discuss their favourite sports in granular detail and engage with the sport, and even celebrities and sportspersons.

Legal judgements sanctioning the skill element of Fantasy Sports

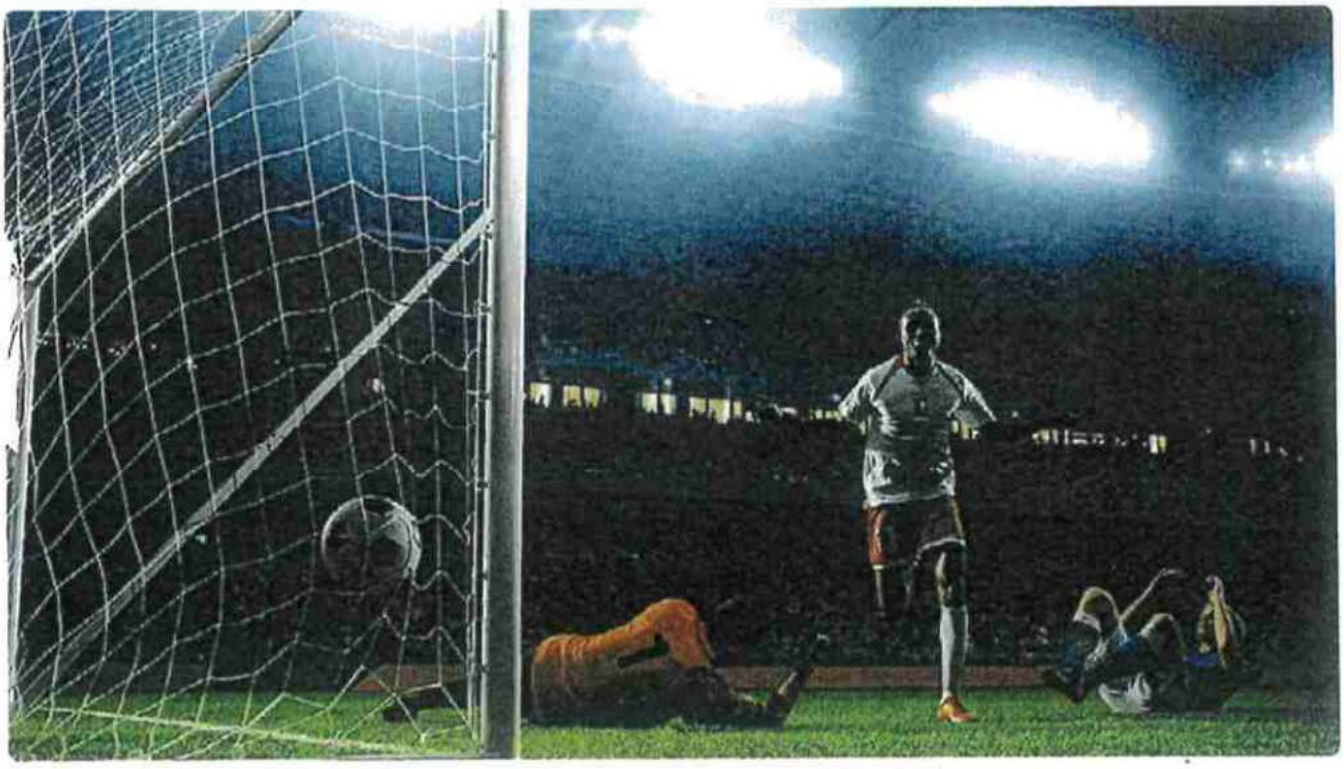
In India, games of skill are exempt from the provisions of the Public Gambling Act. A key steppingstone in the growth of Fantasy Sports in India can be traced back to the High Court of Punjab and Haryana's ruling in favor of Dream11 in "Varun Gumber vs. UT of Chandigarh & Ors" [18], where it was judged that participation in an Fantasy Sports contest required "material and considerable skills by the user in 'drafting' of a virtual team and 'playing a fantasy game'".

Another key development is the Supreme Court order passed on 30 July 2021, reaffirming the judgements passed by various High Courts and ruling that the outcome in Fantasy Sports depended on the skill and knowledge of the participant instead of chance and does not encourage gambling, betting, or wagering.

With the Supreme Court also upholding the judgment and dismissing a subsequent petition, it built confidence for the industry and brought legal certainty. Barring the states of Assam, Odisha, Andhra Pradesh, and Telangana, where state laws disallow residents from engaging in online games (be it skill, chance, or a mix of both), FSPs can operate legally across India. Operators offering FS in accordance with the Charter of the Federation of Indian Fantasy Sports (FIFS) shall be accorded protection under Article 19(1)(g) of the Constitution of India, as a legitimate business activity [18].

With legal clarity on the preponderance of skill over chance in Fantasy Sports, FSPs sought to expand their presence in the Indian market and actively participate in the ecosystem, creating ties with sporting associations, tournaments, and sportspersons.

FSPs have also taken proactive steps to self-regulate and maintain the key characteristics of FS that the High Court of Punjab, Rajasthan, and Haryana had noted in their judgements. The Charter for FSPs issued by the Federation of Indian Fantasy Sports defines the mandatory requirements that FSPs need to adhere to for contests to remain tethered to the skill over chance principle. These include limiting FS contests to international or officially sanctioned real-world matches, ensuring that FS participants cannot alter team compositions beyond a predetermined and pre-declared deadline, stipulating the number of players and the composition of the team, contests based on a complete real-life match, and avoiding problematic actions such as auto-selection of players in a team.



Digitisation in India

With the overall rise in the importance, availability, and access to the internet over the past few decades, the way a viewer consumes and engages with sports has changed massively. The concept of a "connected fan" has resulted in greater involvement of participants from the value-chain, such as leagues, players, sponsors, and media, which has positively influenced the overall growth of the Fantasy Sports industry.

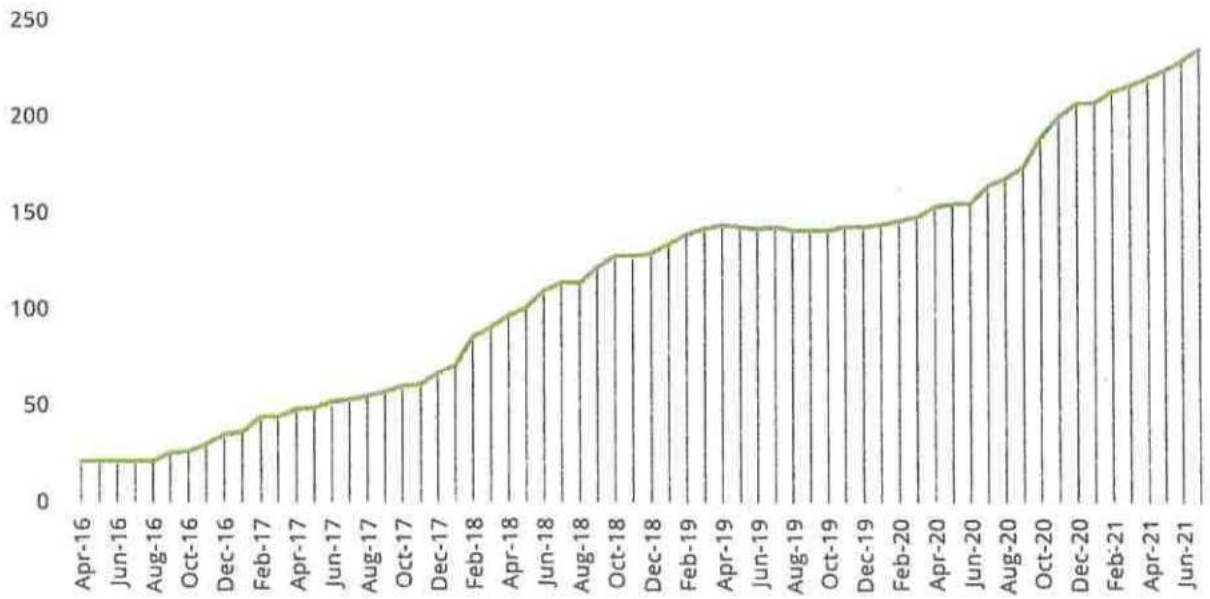
Smartphone literacy, an active internet connection, and secure, click-of-a-button payment methods (should the user choose to participate in prize-based competitions) are critical in defining participation. India, with a median age of 28 years [19] and smartphone penetration of 42 percent (in 2020) [20], offers a sufficiently large universe that could be tapped into by FSPs. The cost of mobile data in India is INR 51/GB, significantly lower than the global average of INR 316/GB [21]. This makes it affordable for mobile subscribers in India to participate in FS competitions. It is because of the smartphone penetration and affordable mobile data plans that most FSPs in India only offer mobile-based apps for participation.

High-speed, low-cost internet also allows FS users to keep abreast with the latest statistics and refine playing strategies through the content put up online by peers/ experts, or even through live-streamed sporting events that are not locally televised. Complementing Pay-TV, the proliferation of OTT platforms also provides FS users with the ability to view and monitor high-quality sports content. This has also opened doors to national and international sports events such as hockey, baseball, football, and kabaddi, that provide additional opportunities for FSPs to engage with their user base and enhance engagement on their platforms.

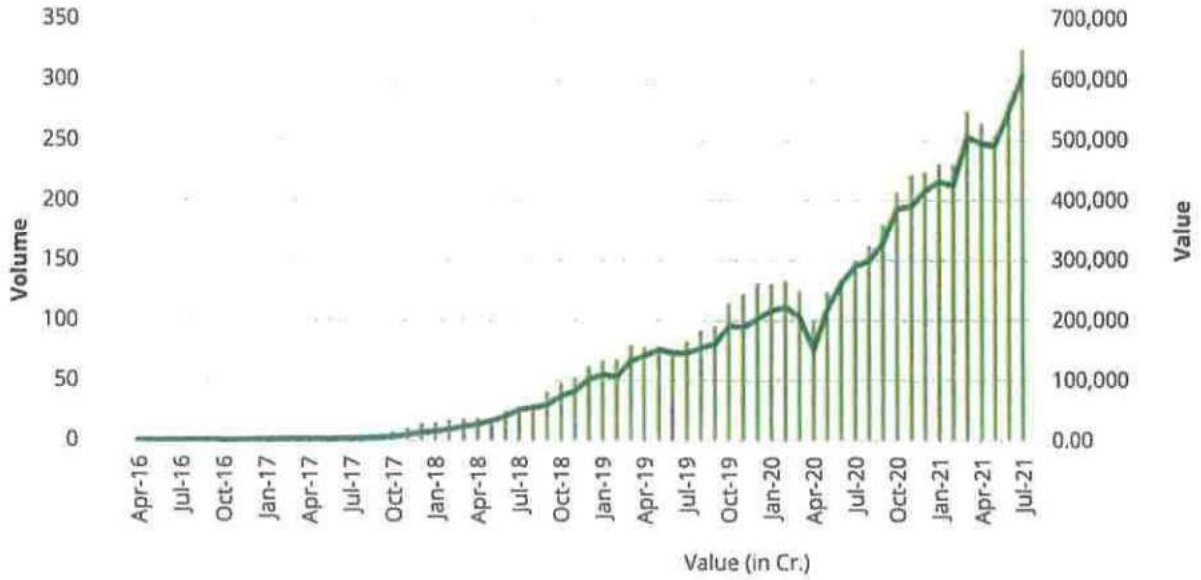
Increased trust in digital payments

India has undoubtedly pulled out all the stops, when it comes to digital payments, its rapid growth, and acceptance. This has acted as a propellant, providing a fillip to several sectors, including FS. Digital payments include RTGS, credit transfers (such as UPI), debit and direct transfers, card payments, and PPI as their categories. These forms of digital payments received a huge boost in the development and user adoption during demonetisation in 2016. Recently, the convenience presented by digital transactions has resulted in its exponential spurt, with Reserve Bank's Digital Payments Index growing 2.7x between March 2018 and March 2021, representing the rapid adoption and deepening of digital payments and UPI clearly emerging as the preferred mode of payment.

Number of banks live on UPI [22]



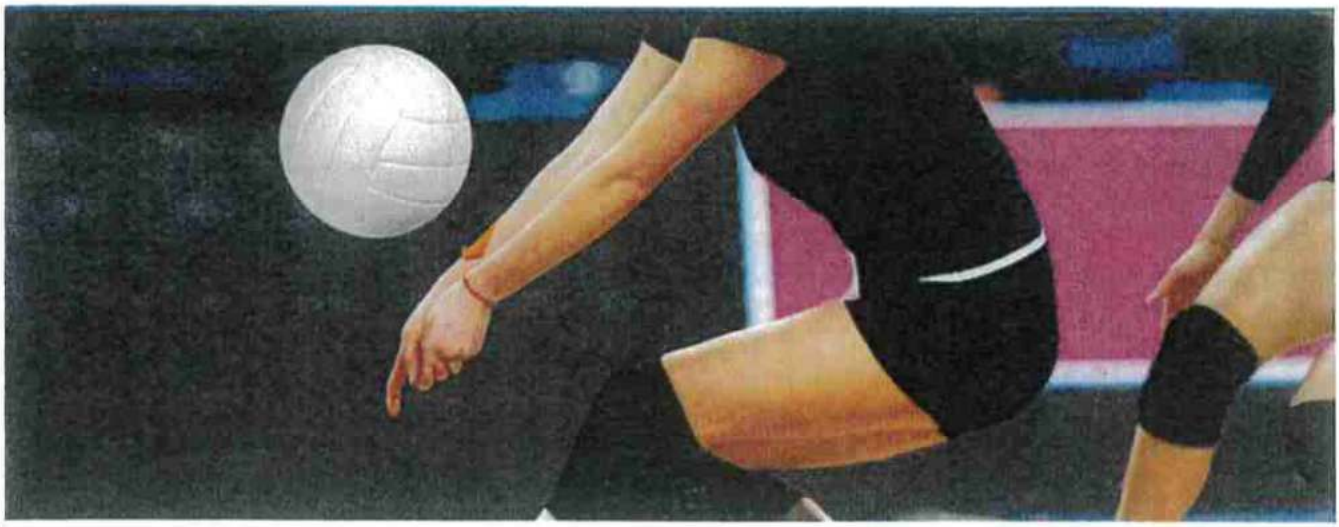
Volume and value of UPI transactions [22]

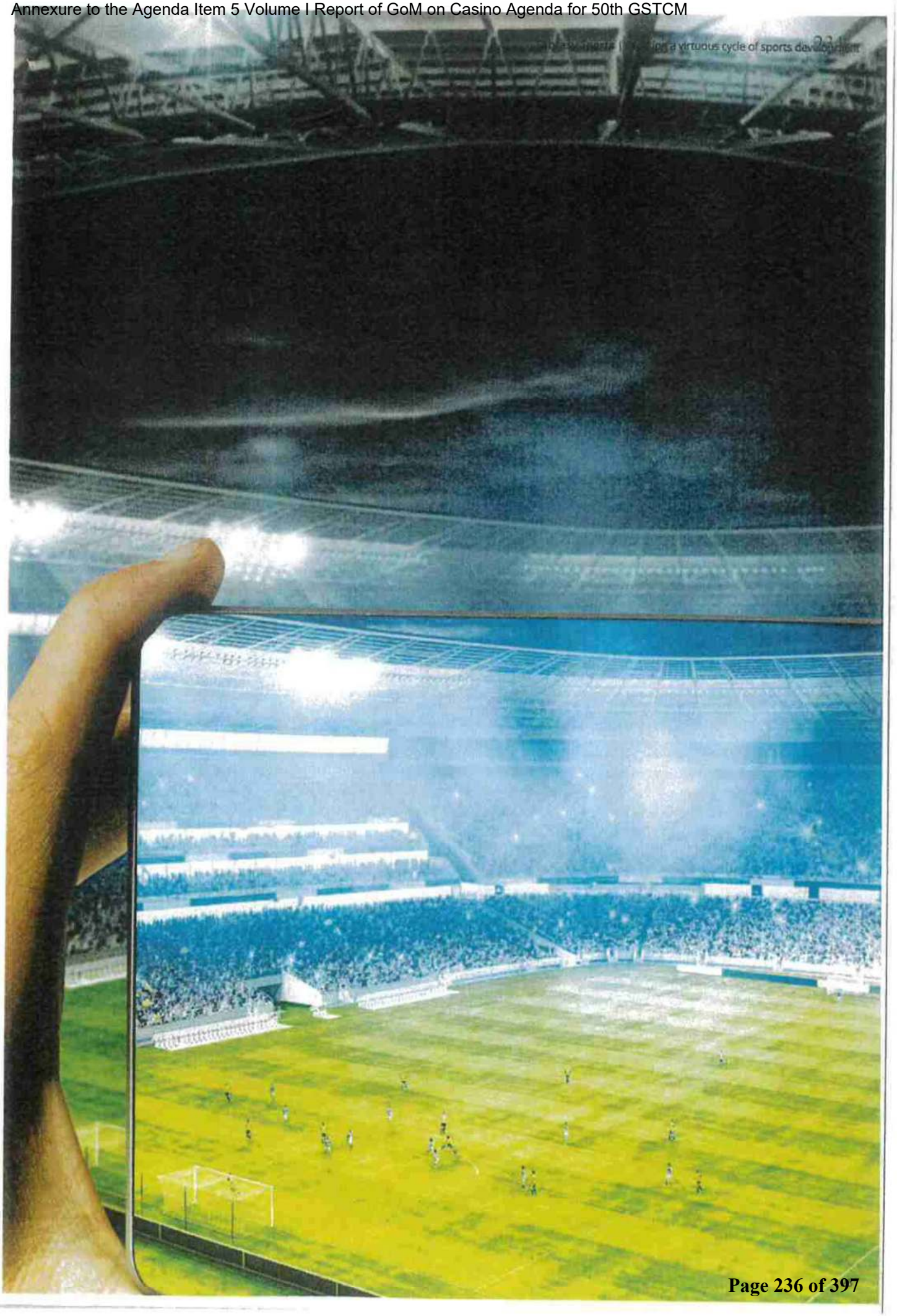


FS contests events have an average CEA of INR 35 [1] and there was a need to enable secure, low-cost, high-volume transactions. Rise of multiple payment platforms powered by Unified Payments Interface (UPI) provided the much-needed support. All transactions, today, on Fantasy Sports platforms take place only through safe and verified digital payment gateways.

While the payment platforms provide a monetisation interface to the FS platforms, FS operators, themselves, are also implementing solutions to enable seamless payment experiences and lower transaction failure rates, allowing operators to manage high-volume transactions and include predictive models to anticipate and scale operations as needed. [1]

Furthermore, Know Your Customer (KYC) documentation of all FS users are verified by operators to ensure that payments are made to legitimate users, who meet the minimum age criteria of 18 years, and are legally permitted to compete in FS contests in India.

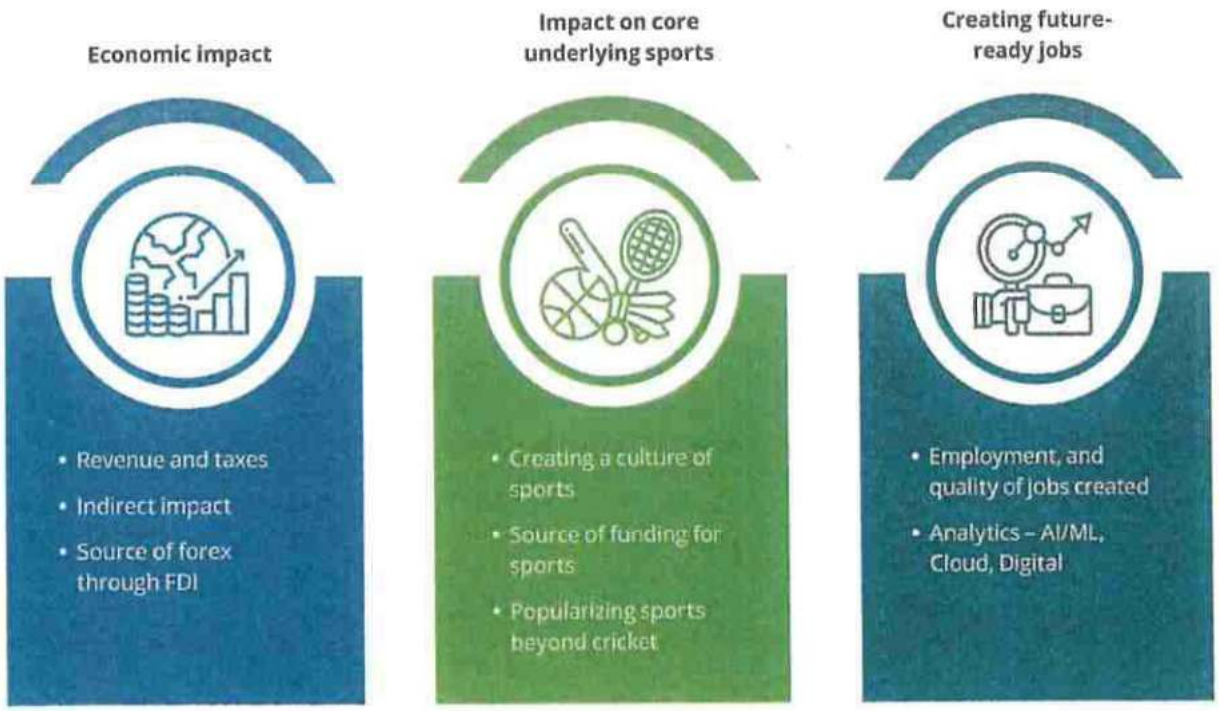



a virtuous cycle of sports development

Impact of FS

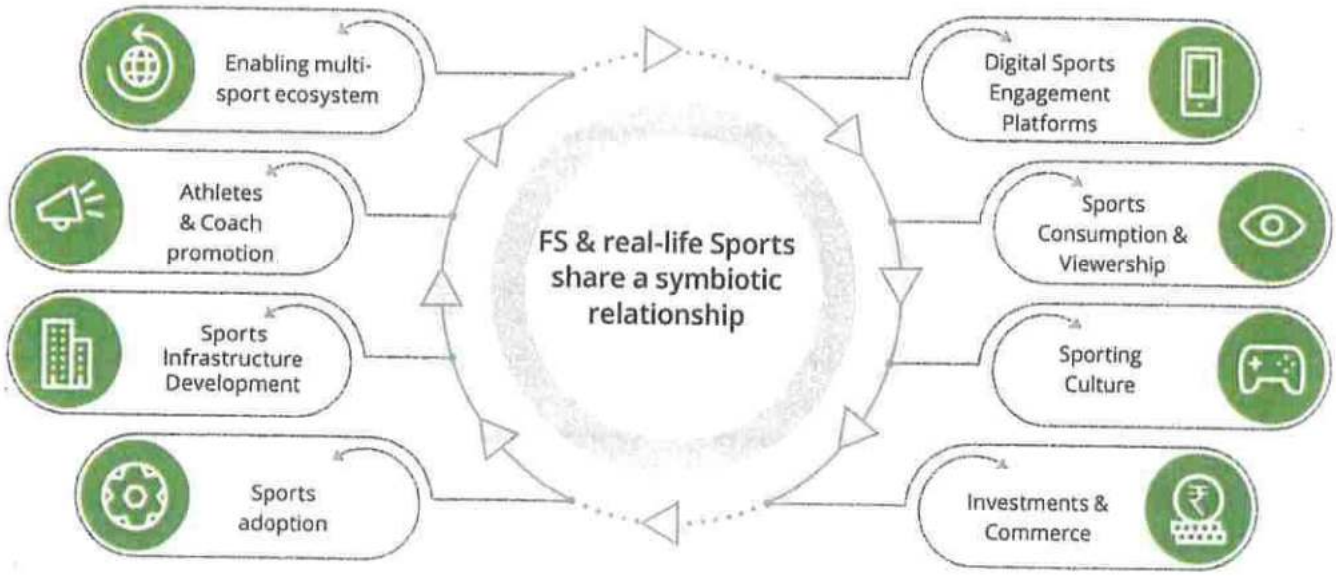
The FS industry has emerged as a key driver for economic and technological growth, and is creating a multi-pronged impact on sports, the economy, and technology. We have analysed this impact under three dimensions using the sectoral multiplier effect. This helps estimate the level of economic activity in other industries/sectors, resulting from a rupee of output in a given sector and leading to direct and indirect need for employment and resources.

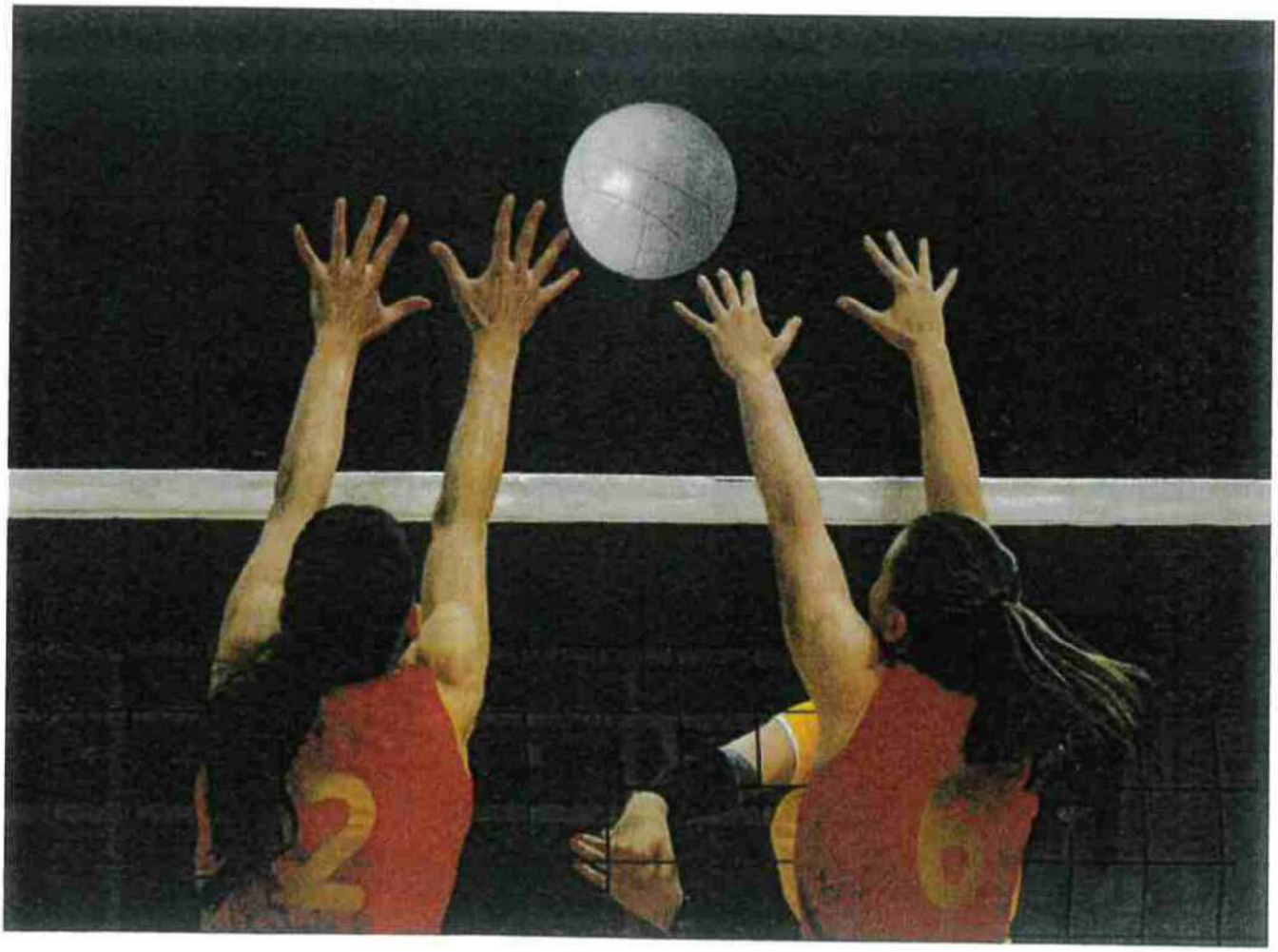
Illustration: Impact of FS across three key dimensions



The growth of the Fantasy Sport industry is intertwined with the stability and growth of the sports industry in India. Investments in the sports industry will draw more eyeballs to the game, which will in turn, enhance the participation of sports fans on FS contests. FS operators have leveraged this symbiotic relationship to invest in the ecosystem and build the enablers required to ensure sustained user base growth.

Illustration: The virtuous cycle of sports development[1]



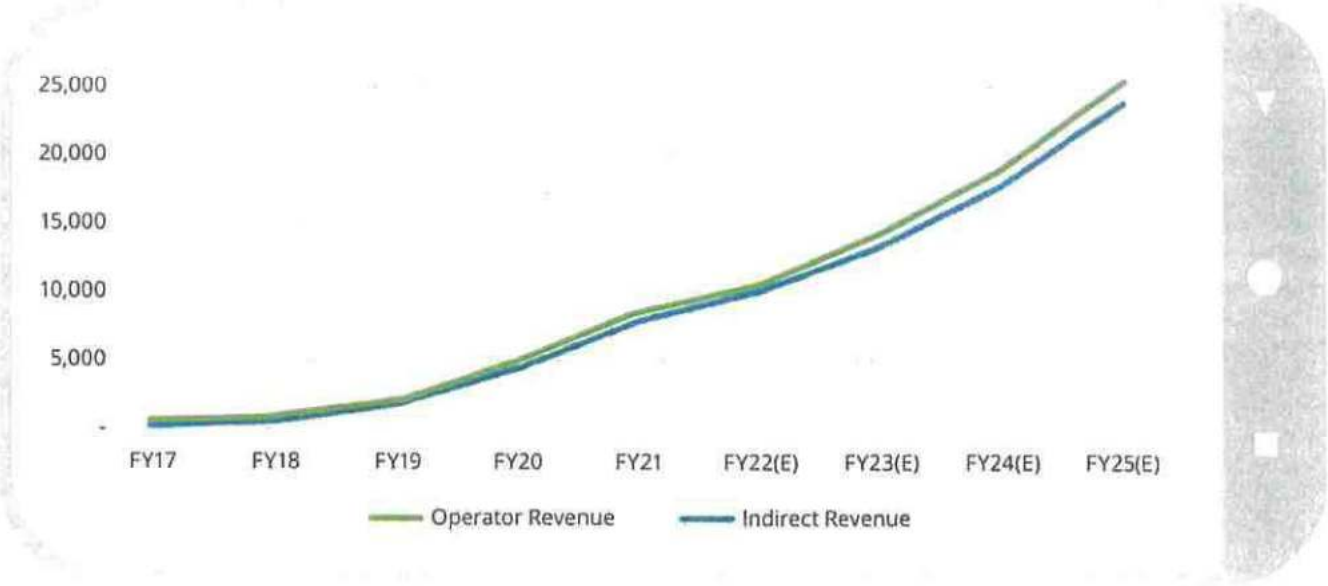


Economic Impact

The FS industry size, per FIFS, is estimated to be around INR 34,600 crore, as of FY21. The revenue generated by FSPs from CEA is in the form of a platform fee, which is generally 10-20 percent of the CEA. Therefore, on a revenue estimated at INR 5,200 crore, FSPs are estimated to have paid INR 930 crore in Goods and Services Tax (GST) and INR 260 crore in corporate taxes. On top of that, there is TDS deducted on winnings, which as per industry estimates, in FY21 was to the tune of INR 260 crore, and is expected to increase to INR 690 crore in FY22. [1]

In addition to the direct impact, the Fantasy Sports industry has contributed to growth in other existing businesses, including online sports scoring platforms, online sports content aggregators, sports merchandising and e-commerce, online sports streaming, digital payments, travel and sports experience, online coaching and sports turf management, and cloud services. It is noted from FIFS' 2020 report on Fantasy Sports in India, that for FSPs to raise their output by INR 100, various associated vendors and service providers need to raise their output by INR 107 [23]. We can infer that the generation of INR 5,200 crore revenue, in FY21, would have created an indirect revenue of approximately INR 5,500 crore through its vendors and service providers. The total revenue attributable to FSPs (direct + indirect) is therefore, INR 10,700 crore. It may also be noted that the indirect revenue will generate its own stream of GST as well.

FS Operator and indirect revenue from projections (INR crore) [1]



Note: Market size and revenue projections could be materially impacted by regulatory actions that result in adverse or favourable effect on the performance of the Indian Fantasy Sports Market

As FS is a sunrise sector, it has served to attract both domestic and global investors; with over INR 10,000 crore investments in form of FDI, per FIFS estimates, [1] across major platforms. Such investments help bolster India's forex reserves and currency. Some key investments in the last couple of years have been tabulated below:

Illustration: FSPs attracting marquee investments [24][25][26]

Company name	Year of incorporation	Investors	Year of investment	Amount
Dream Sports	2008	Falcon Edge, D1 Capital, and Redbird Capital	2021	INR 9,200 Cr
		Tiger Global Management, TPG Tech Adjacencies (TTAD), ChrysCapital and Footpath Ventures	2020	INR 1,680 Cr
Mobile Premier League (MPL)	2018	Legatum Capital, Composite Capital, Moore Strategic Ventures, Play Ventures, Telstra Ventures, and Founders Circle Capital	2021	INR 1,810 Cr
		Sequoia India, Go-Ventures, and Base Partners, SIG, RTP Global, and MDI Ventures	2020	INR 675 Cr
Halaplay	2016	Nazara Technologies	2020	INR 14.6 Cr

Note:
Dream Sports numbers will be a representative of its brands, namely Dream11, Fancode & DreamSetGo
MPL numbers may be a representative of its Fantasy Sports platform and other offerings
Nazara's investment in Halaplay was to acquire Kae Capital's stake

Economic impact of FS

Direct revenue (FY21)
INR 5,200 crore[1]

GST directly paid by FSP (FY21)
INR 930 crore[1]

Revenue generated for secondary industries (including payment gateways, technology providers, media platforms, and agencies) by July 2020
INR 2,600 crore[6]

Associated ad revenue to reach
INR 2,000 crore
over the next 3 years[7]

Already attracted forex in the form of FDI worth INR 10,000 crore; Industry participants expecting to attract 15,000 crore over the next three years [1]

GST, Income tax on winnings and corporate tax paid by FS operators has grown more than 10x over the past three years to INR 1,450 Cr in FY21;

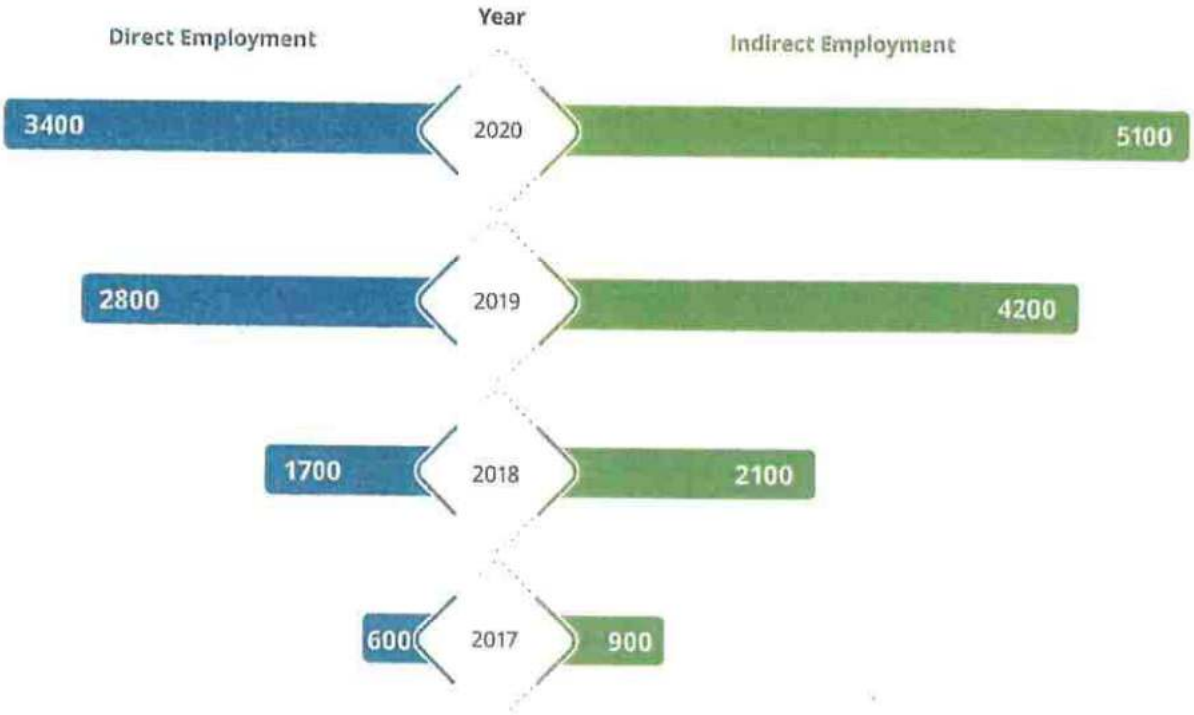
This is expected to contribute significant revenue to the exchequer, with the combined industry contribution estimated to cross
INR 16,000 Cr, cumulatively over the next two years [1]

Number of digital transactions on the FS platforms:
~65 crore in 2021,
expected to be
150 crore by 2023 [1]

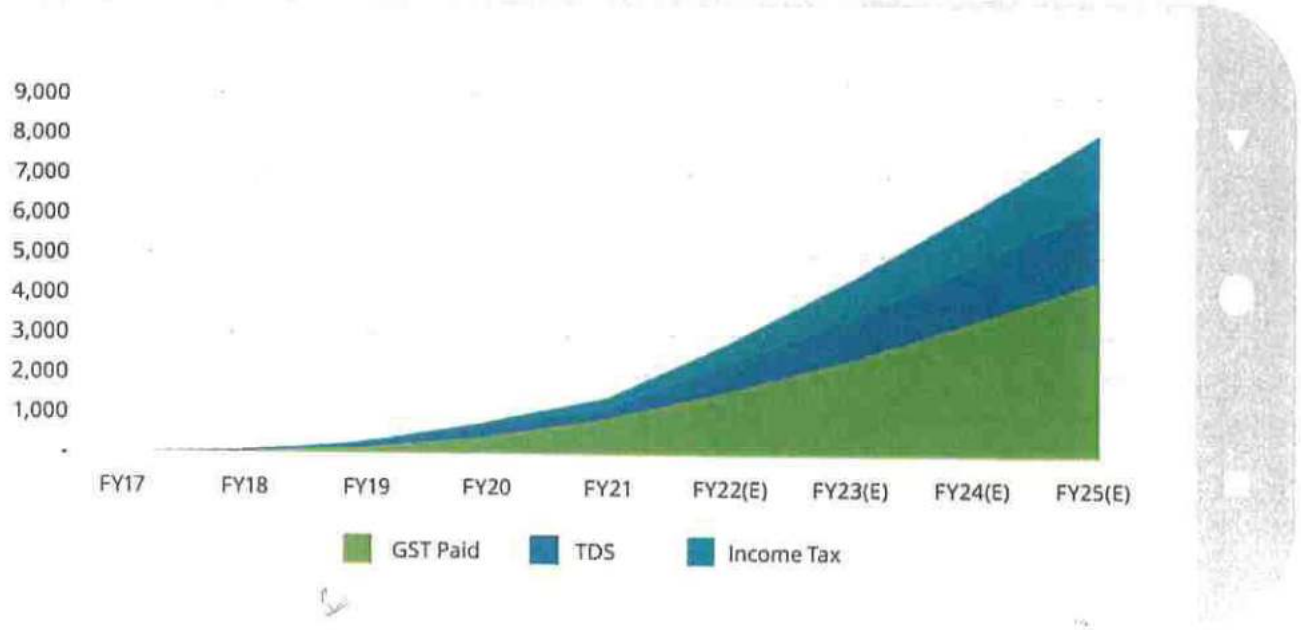
Around 3,400 direct and over 5,000 indirect jobs created by 2020 [6] with a potential to generate 5,000+ direct and 7,000+ indirect jobs by 2023 [1]

Note: Market size and revenue projections could be materially impacted by regulatory actions that result in adverse or favourable effect on the performance of the Indian Fantasy Sports Market

FS generating employment opportunities [1]



Government revenue (past years and projection) from FS in the form of taxes (INR crore) [1]



Note: Market size and revenue projections could be materially impacted by regulatory actions that result in adverse or favourable effect on the performance of the Indian Fantasy Sports Market

Impact on core underlying sports

Grassroot Level

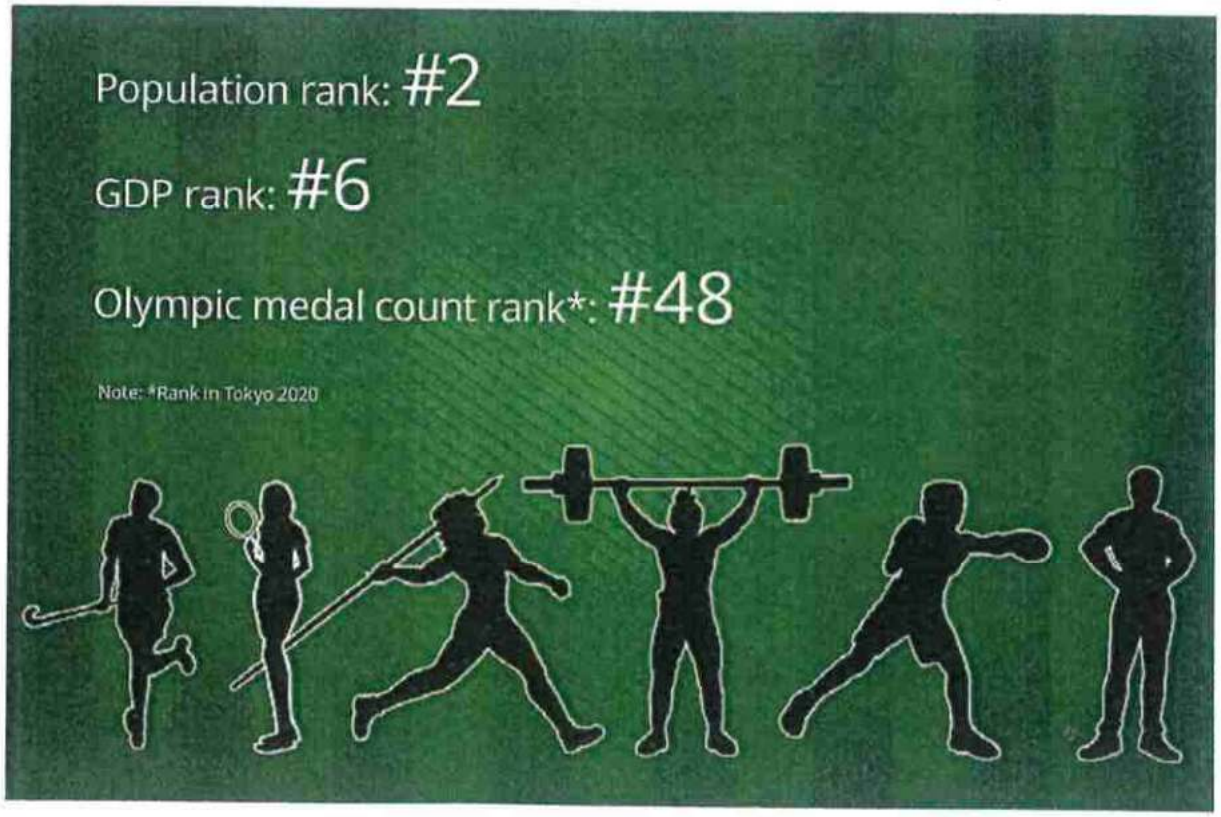
Sports has always been sought after in India with cricket dominating the country. As Fantasy Sports gains popularity, the Indian sports industry will witness a parallel growth. When users indulge in Fantasy Sports, it becomes imperative for them to watch the actual live matches unfold, as it allows them to make informed decisions for their virtual teams.

Fantasy Sports began with cricket as its focus sport, but overtime has expanded its offerings to include several others, such as kabaddi, basketball, and football. Subsequently, these sports witnessed a surge in their viewership owing to their growing popularity across Fantasy Sports platforms. Kabaddi has gained massive popularity since the emergence of the Pro Kabaddi league (backed by famous celebrities). This has created opportunities for Fantasy Sports providers and built prospects for athletes at grassroot levels. Additionally, the popularity of kabaddi is set to create opportunities for athletes in the international market. A large user base, high revenues, and a high market value point to a better future for the sports industry. On the FS platforms, 50 percent user transactions have come in through tier-2 and tier-3 cities, promoting digital payment literacy and also increased engagement and involvement of the population in sports. More so, the engagement on FS platforms also results in increased sports viewership by 60 percent [1], resulting in better appreciation and adoption of sports at grassroot levels and subsequently, marking a positive impact on the sports industry.

Creating a culture of sports

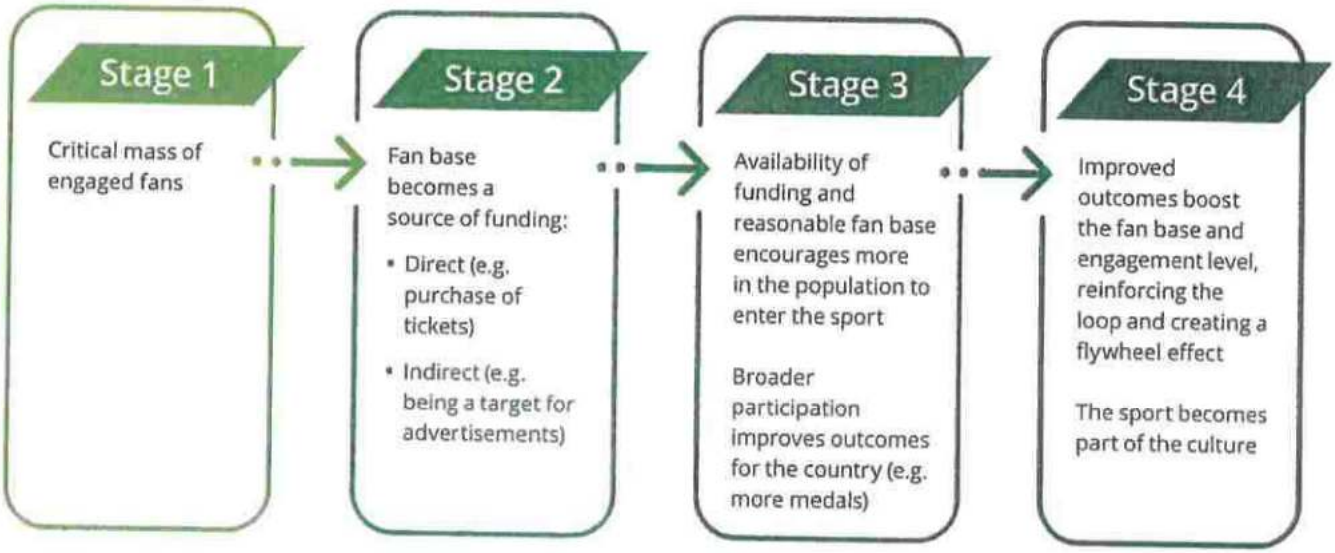
India is the world's fifth-largest economy (by GDP) with world's second-largest population. However, in terms of the number of Olympic medals won, it ranks a distant 48th, even at the recent Tokyo Olympics, where the country recorded its best-ever Olympics performance.

India's rank in select parameters (2021)



One of the key reasons cited for India's underperformance is the lack of a culture of sports across the country. Back in 2017, Abhinav Bindra, India's only individual Olympic gold medallist at the time, stressed on the need to "aggressively" work towards creating a sporting culture in the country [28]. Several elements go into shaping a sports culture. An important piece of the puzzle is cultivating an engaged audience/spectator/fan base. A large base of engaged fans can create the momentum for a sport and serve as a source for other building blocks required for its development.

Fan base creating momentum for a sport



Carving out an initial fan base that crosses the critical mass (Stage 1 in the illustration above) is a crucial step, beyond which, the cycle starts self-propelling. Cricket in India reached Stage 1 through the efforts of the television industry, which took the game to the masses. The self-reinforcing loop has since brought cricket to where it stands today in India.

The framework of FS is such that it creates engagement beyond passive viewing. FS rewards users who improve their skills and knowledge. The creation of a virtual team, and the links to real-world matches typically causes the user to be invested in players and the outcomes; the level of engagement is higher. The digital nature of FS also allows for better segmentation and targeting of users, making it easier to build a critical mass.

"It is my observation that we feel connected to the players and feel personally attached to them when they are a part of our Fantasy Sports team. As a result, we follow them, their performances, and injury updates. It is not only limited to the high-profile players but every player that makes it to our team. This in turn, also encourages us to watch teams and matches we otherwise might have skipped."

A YouTuber, who runs a channel with **~400K** subscribers, analysing team/player performances to help FS users build their team strategies.

In the age of mass media, television helped achieve a remarkable outcome for cricket in India, with the country being considered a dominant force in all forms of the sport today. In today's digital and personalised age, FS may be a tool that could achieve similar outcomes for a broader set of sports, beginning by taking each sport's fan base to a critical mass. FS may thus be explored as a means to shape a culture of sports in India.

Contributing to investments and commercial activities in sports

FSPs are part of the sports ecosystem. In addition to helping create a base of engaged fans (representing revenue potential to be tapped), FSPs have been contributing to the overall investments and commercial activities in sports. This could, amongst other things, take the form of sponsorship for a sportsperson, a team, an event, or a sporting body.

FSPs, around the globe, have been picking up sponsorship rights and exclusive branding rights, thus funding the underlying sport. In India, MyTeam11 acquired title sponsorship rights of the India Tour of West Indies 2019, My11Circle picked up a deal worth INR 15 crore as Lanka T20 Premier League's title sponsor. MPL, in addition to being the principal sponsor for the Caribbean Premier League (CPL), became the kit sponsor for Men's, Women's and the Under-19 Indian cricket teams, and Indian Olympic Association's principal sponsor for the 2021 Tokyo Olympics. Dream11 bought the rights to the title sponsorship for IPL 2020, and also became the official fantasy football partner for the Indian Super League football series. [29][30][31][32][33]

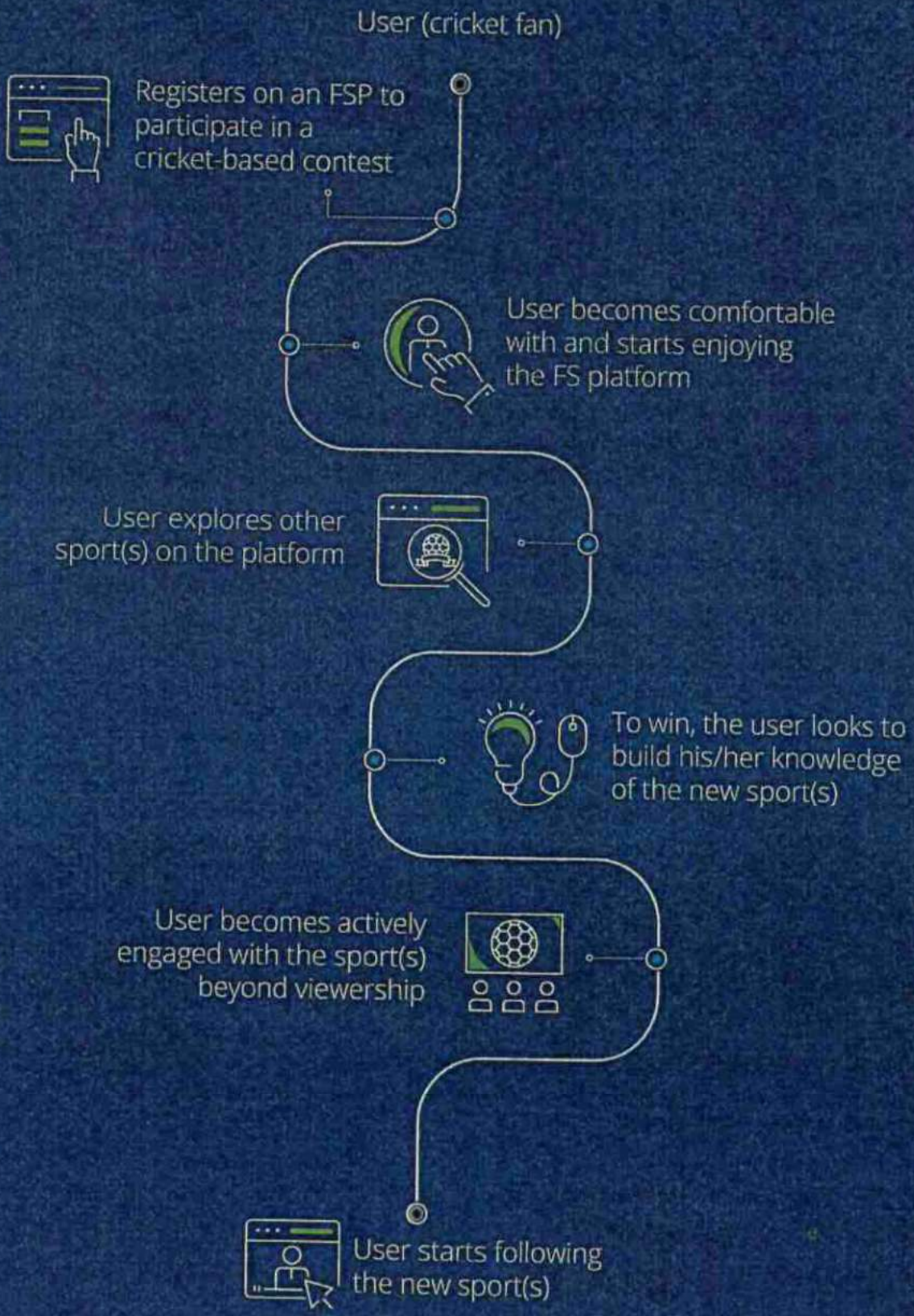
FSPs also often fund sportspersons to act as brand ambassadors and other marketing purposes. Some marquee examples of sportspersons and celebrities in India sponsored by FSPs have been tabulated below:

Brand Ambassador	FSP Operator
Mahendra Singh Dhoni & Jemimah Rodrigues	Dream11
Sourav Ganguly, VVS Laxman, KL Rahul, Shane Watson & Ranveer Singh	My11Circle
Virender Sehwag	MyTeam11
Virat Kohli	MPL Gaming
Sunil Chhetri	Twelfth Man
Samir Kochhar	Khelo Fantasy
Kiccha Sudeep	Namma11

Popularising Sports Beyond Cricket

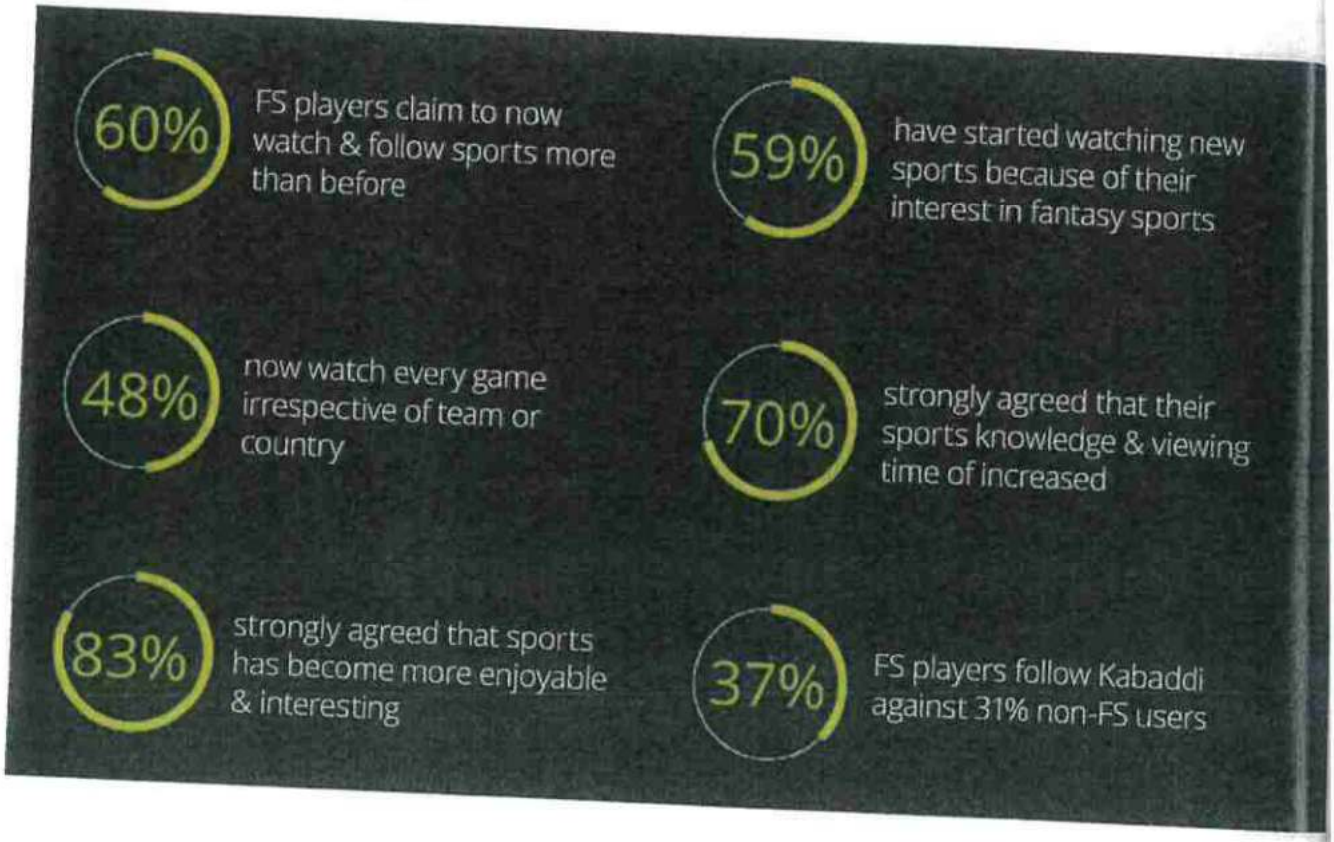
Due to its dominance in the Indian psyche, cricket is often the first sport in an FSP's portfolio. Nevertheless, our discussions with industry participants reveal that most FSPs are already targeting or intend to target sports beyond cricket. The thought process is that once a user joins the FSP for cricket, (s)he is likely to explore other sports offered on the platform. This is particularly true when the calendar for cricket has a gap, or when the regular schedule is affected, for instance, during COVID-19. The "chicken and egg" journey of a user who registers with an FSP for cricket and opens up to an additional sport is illustrated on the next page.

Illustration: The diversification journey of a cricket fan



Several research findings have highlighted the impact that Fantasy Sports have had on the consumption of sports. These findings are primarily based on surveys performed and have been published extensively. [32][33]

Illustration: A connected experience



Through CSR activities, FS operators are also supporting the development of sports that are in their infancy (i.e., haven't been strongly promoted) in India. Stars of Tomorrow (SOT), is a three-year programme launched by FIFS in association with the Dream Sports Foundation (erstwhile Dream11 Foundation) and GoSports Foundation in December 2018, that provides financial support and much-needed focus to aspiring athletes. The programme focuses on athletes in the age range of 14 to 21 years across a diverse set of non-mainstream sports such as sailing, squash, tennis, swimming, compound archery, sport climbing and golf. Very recently, Nethra Kumanan, a scholar of the program, became the first Indian woman sailor to qualify for the Olympics. Since the programme's inception in 2018, 14 supported athletes in this programme have won 47 gold, 31 silver, and 17 bronze across numerous sporting events. The Dream Sports Foundation pledged INR 3 crore to support this cause for three years. The grant helped fund the training, living, competition expenses, sports nutrition, coaching, sports psychology, amongst other services for the athletes.[36] Also, the foundation's "Back on Track" initiative, launched in August 2020, has further supported over 3,500 sports professionals (current, retired, coaches, sports support staff, and journalists) across 29 sports during the pandemic. [1]

MPL Sports Foundation, the community arm of Mobile Premier League (MPL), started a unique initiative to build a fan base for our athletes, called the Indian Olympic Fan Army. The army, now 10 crore+ fans, includes fans from MPL's users and supporters from top sports clubs in the country. Through this initiative, the foundation aims to engage with Indians across the country to encourage them to continue cheering for our athletes, even after the Olympics. MPL Sports foundation has been making an impact through its "Sahyog" initiative, where it has been using sports as a platform to raise funds in support of COVID-19 relief campaigns, promote India's shooting athletes, and promote Divyang Premier League, India's first franchise-based, premier league format T20 cricket tournament, dedicated to differently abled cricketers in India. [1]

Creating future-ready jobs

Within primary and associated industries

Fantasy Sports operators are at the forefront of sports technology and analytical businesses. The FS industry continues to explore new technologies for increased accessibility and an immersive experience for its users. Making use of AI, Dream11 employed Haptik's chatbot to handle over 80 percent of the 10 lakh+ customer support queries during IPL 2018. Halaplay has partnered with Roanuz for real-time scorecards, statistics, and Fantasy Sports management. Making use of data analytics, Dream11 also uses CleverTap's cohort analysis to categorise users and make their Fantasy Sports experience competitive. [37]

Being a technology-driven sector, Fantasy Sports have been generating a demand for skills as varied as product management, web, and application development, UI/ UX, ad-tech, data analytics, cloud, storage, security, and digital payments.

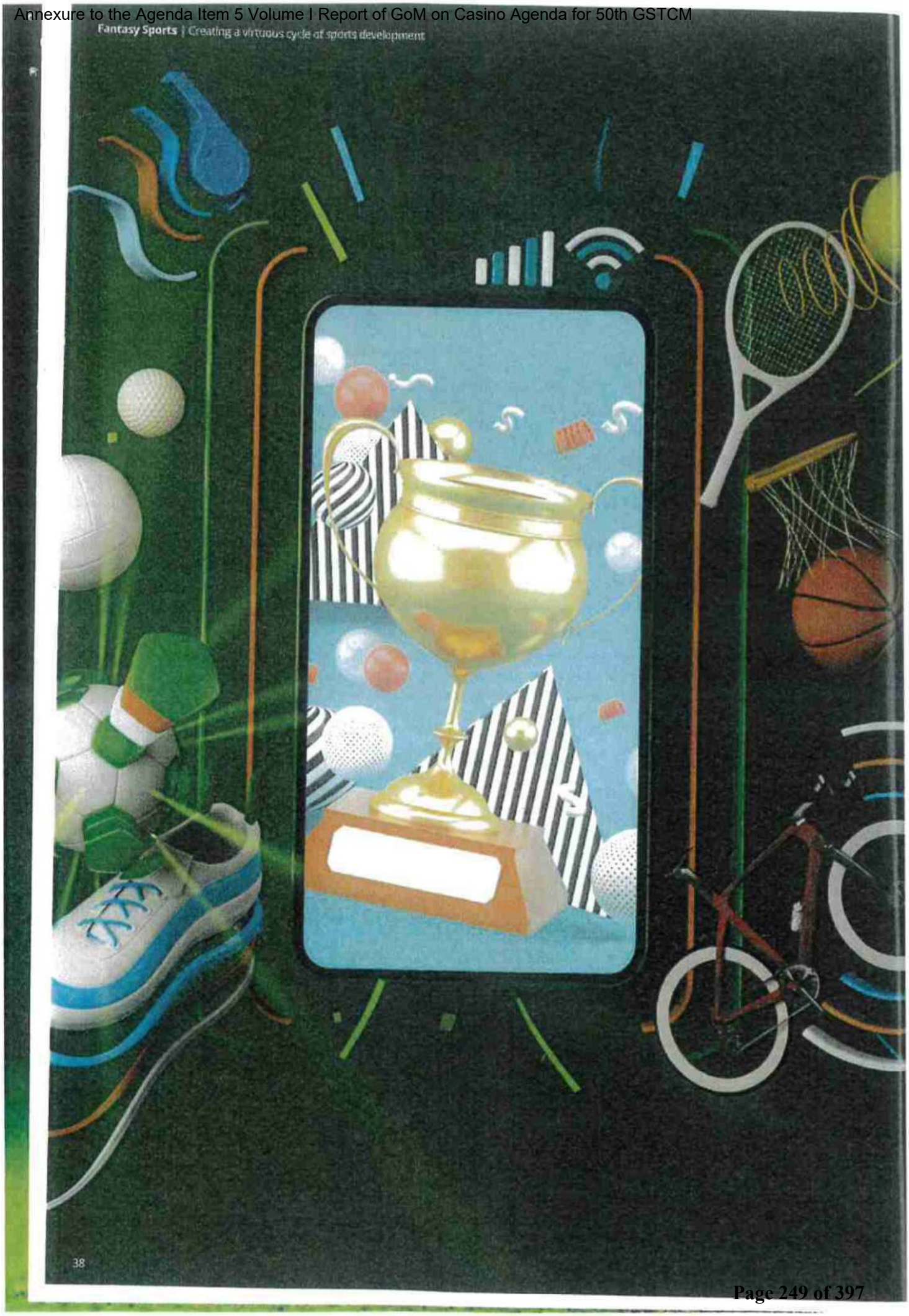
To supplement this, content aggregator platforms such as CricInfo, Cricbuzz and Goal.com have been creating a unique value proposition by providing meaningful insights into the players' performances. Founded in 2019, FanCode, a Dream Sports brand, is already said to have acquired close to 2 crore users by offering a blend of content, commerce, and community. It provides sports statistics and analysis, and has more than 20 experts on-board to provide insights and predictions through detailed team and player analysis.[38] Taking a cue from developed markets, the Indian FS ecosystem is also gearing towards a proliferation of sports analytics solutions, which may provide an edge to FS users through data-driven trade decisions.[39] Several sports analytics solution providers have already proliferated the FS ecosystem outside India that claim to provide an edge to FS users through data-driven decisions.

Our research suggests that the FS sector in India employs 3,000–4,000 people today. While attention often drifts to the absolute employee count, we note that a significant number of these are roles that involve future-ready skill sets. These include areas such as analytics (including AI/ ML), cloud, and digital technologies. These skill sets are expected to be in high demand in the future. Growth of the FSP sector can propel the demand for such a skill-based talent pool in India.

Other ancillary industries

Beyond FS and its associated industries, there are those who derive livelihood from FS, even though they are not employed by them. Social media influencers are becoming instrumental in driving FS engagements via social media. Ranging from sports enthusiasts to just fans who enjoy the thrill of analysing matches and performances, these influencers play a significant role in the proliferation of FS. Besides creating a space for user engagement and imparting knowledge to the masses, they have found a source of income through influencer marketing. There are more than 500 applications, websites, and YouTube channels available in India that provide research, articles, community chat, and tips to FS users [1].

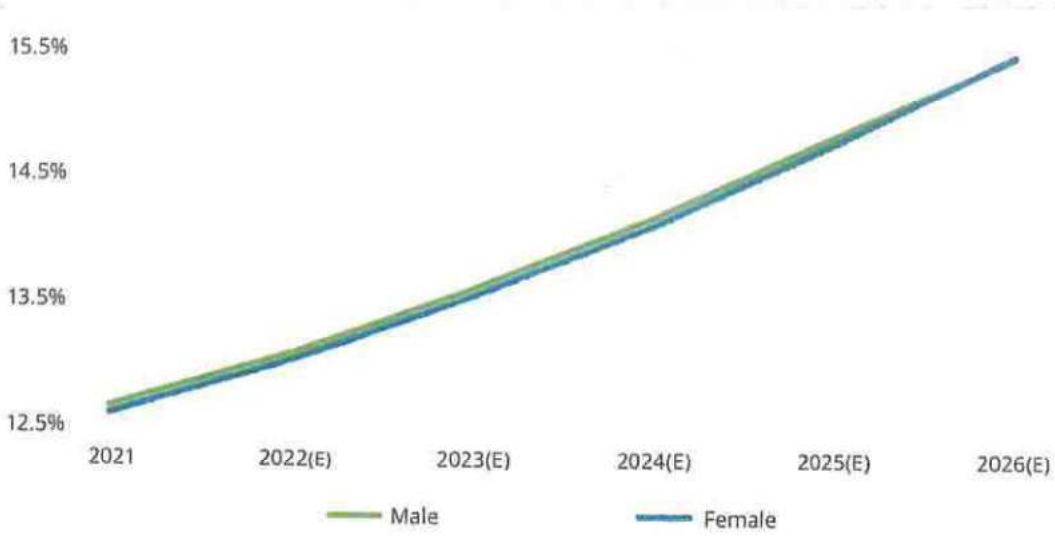
Illustration: Youtube subscribers of the top five FS platforms



Profile of the FS Userbase

Globally, the FS userbase has been male dominated with males contributing to 67 percent of the total revenue. Furthermore, the male FS user segment is expected to grow at a CAGR of 14 percent during 2020–26[7]. While the Fantasy Sports userbase has predominantly been male, there is a visible, promising growth of female users too.

Global Fantasy Sports market growth-rate projection by gender[7]



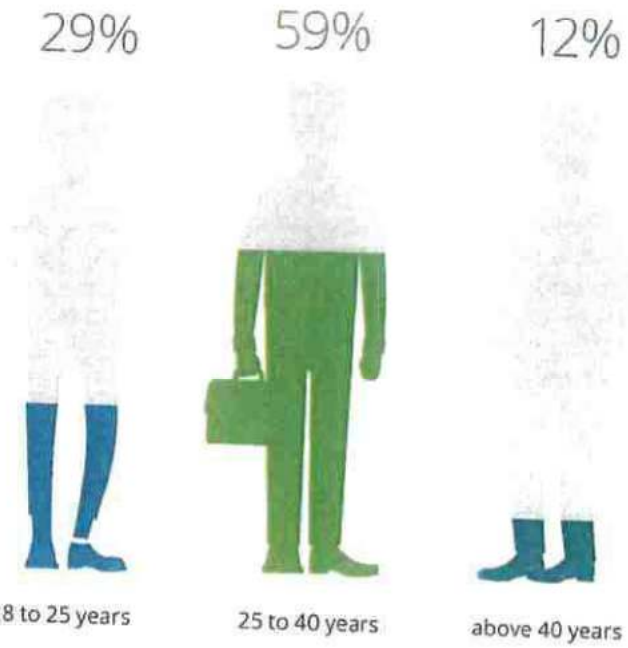
Shifts in social norms, inclusion of women in the sports industry, increased popularity of women's cricket and football, and heightened awareness of sports has seen the share of female users on FS platforms rise in recent times. Globally, the revenue from the female FS platform user segment is expected to rise at a CAGR of 13.9 percent from INR 2,200 crore in 2020 to over INR 5,200 crore by 2026 [7]. It is estimated that close to 30 percent of the registered user base for FSPs in India are female users, a number that is expected to consistently rise over the next few years.

Looking at the geographic spread, Fantasy Sports appears to be a growing phenomenon across the country; however, users from the northern states have shown a marginally greater awareness and participation, while users from non-metro cities have shown higher awareness and usage trends compared with metros. [40]

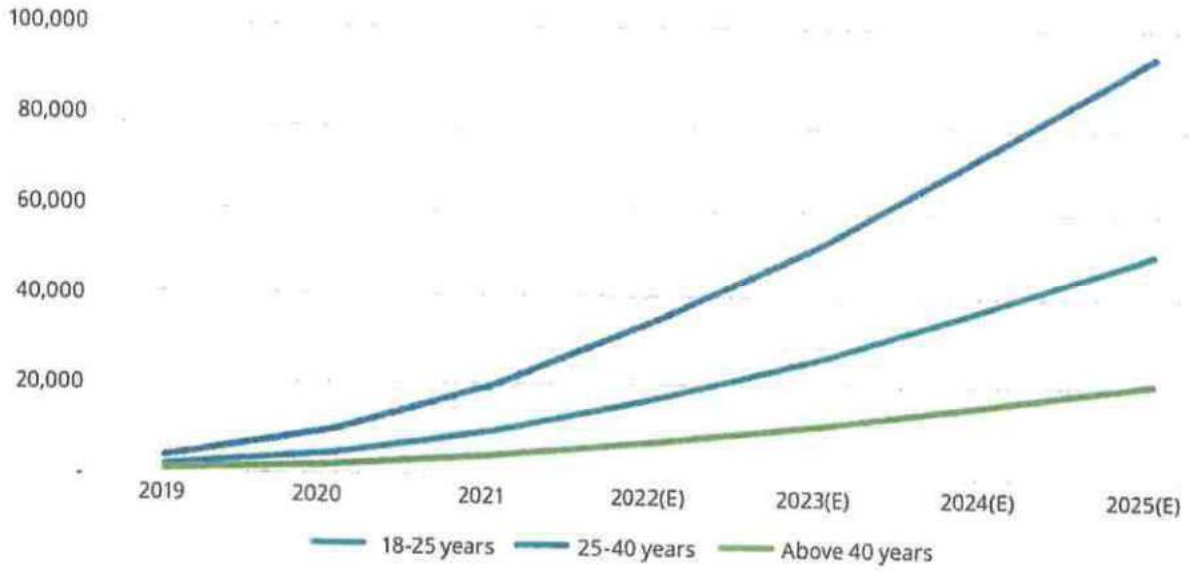
Per a recent survey, of all the respondents who indicated participating in Fantasy Sports, NCCS A1,A2,A3 accounted for 95 percent, while 84 percent were working professionals, 16 percent were students, and 93 percent were graduates or more. [40]

It is estimated, that globally, the average age of the Fantasy Sport user is around 37 years [7]. In the Indian market, the most actively engaged Fantasy Sports users are in the 25-40-year age bracket [3], who are willing to enter pay-to-participate contests due to the low-entry costs per contest and with higher disposable income for entertainment. It is also a segment that is expected to remain a significant contributor to the Indian FS market, retaining over 50 percent market share for the next five years.

Indian FS market share by age demographics[3]



Indian FS market size projection by age demographics (INR crore)[3]



Given the significant influence millennials exert currently on the Fantasy Sports revenue, it is also vital to obtain a broad understanding of the key traits of this transforming fan base.

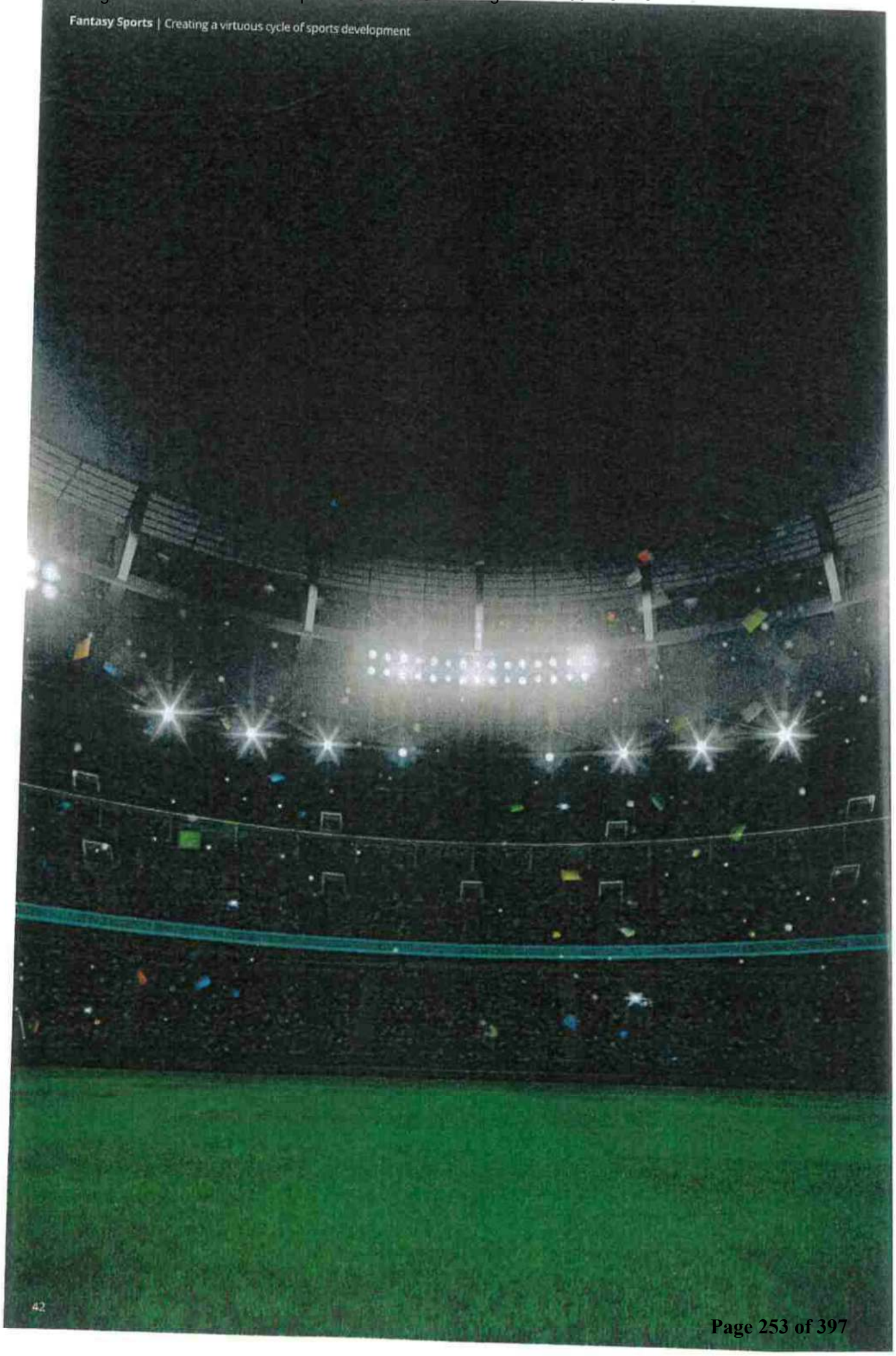
Tech savvy and knowledgeable - The new FS user is not relying on just browsing websites and viewing the news to understand the optimum team for the next sporting contest. The user is scouring social media platforms for insights, viewing YouTube videos made by industry experts, following key Fantasy Sports pundits on social media, and delving into analytical platforms. The user does not just know the player, (s)he is aware of the weather conditions on ground, historical outcomes in the stadium, and the health of each player of the team. Their team is built on a careful understanding of multiple variables that can impact the player and the game.

Active and connected – The new FS user is not just watching the match on TV. (S)He is livestreaming the game on the device of their choice and tracking the progress of the game by the minute. The user is on social media, conversing with other Fantasy Sports users. The user does not want to know the summarised outcome of their event; (s)he wants to see the real-time alterations of their position on the contest leader-board. They want options to immediately share opinions or updates from their app to their inter-connected social media platforms. The user may be live streaming their reactions to the game to their followers and providing feedback on the event to other users.

Enabled for smarter decision making – Lack of insights or timely information is not an excuse for users anymore, rather identifying relevant information is a skill in today's age of data democratisation. Analytics and data on the past performances of the players is not a premium knowledge resource anymore to the new FS user. There are multiple websites and tools available at their disposal. The new FS user is insight driven and constantly seeks information to aid his/her judgement. Whether, it is a player's past performance, the likelihood of sustained performance, or other analytical insights, the user may be willing to invest time and money in platforms that provide supporting analytics.

No tolerance for frictional user interfaces – The penetration of smart phones and the reliability of payment platforms means that the new user is less forgiving on matters of convenience. User interfaces are expected to be intuitive, predictive, and responsive with payment being a seamless activity. The new sports user prefers the convenience of wallet transactions and UPI interfaces so that payment is quicker and less of a hindrance to the fantasy sporting action.

FSPs have been adapting their approaches to the market and customer experience expectations. Operators are exploring opportunities to work with industry bodies, traditional sports shows, OTT platforms, and digital sports destinations to build highly personalised content, community interactions, and expand user outreach. By offering live-streaming capabilities, research statistics, expert fantasy tips, and sports merchandise, they are looking to build an ecosystem that provides synergies with core service offerings.



Taking the Industry to the Next Level – Risks and Opportunities

This section discusses key risks that could derail or impede the FS sector's growth and the ways to create an enabling environment to help the sector realise its potential.

Stable regulatory framework

The legal framework for online games of skill is ambiguous and are often erroneously regulated under gambling laws. The Public Gambling Act, 1867 was enacted to govern and restrict gambling, while taking a favourable view towards games of skill from being prohibited under these Acts. Since independence, various states have adopted the Public Gambling Act and some states have enacted their own laws for gambling, as gambling and betting are state subjects under the constitution. The intent of these laws is to ban gambling or games of chance.

Under Entry 34 of List II, per the Seventh Schedule of the Constitution of India, state governments are authorised to make laws on betting and gambling.[41] It has been settled by the Supreme Court as well as High Courts that the FS format of Fantasy Sports is a game of skill and cannot be regarded as betting/gambling. Thus, states may not have the right to prohibit or regulate Fantasy Sports under entry 34 of List II, Seventh Schedule of the Constitution of India.[42]

Fantasy Sports platforms are IT intermediaries regulated under entry 31 of List I of the Constitution of India. In response to a Parliament Question, the Ministry of Electronics and Information Technology stated that "Online gaming platforms are intermediaries, and they have to follow the due diligence as prescribed in the Information Technology (IT) Act, 2000 and the Rules thereunder". The platforms are currently regulated under the IT Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.[43]

Currently, the industry is subject to varied regulations and compliance requirements across states based on their socio-economic contexts. Such an approach will ensure FSPs' adherence to differing legislations, potentially impacting their ability to operate, sustain growth, and attract investment.

The "Draft Guiding Principles of Uniform National Level Regulation of Fantasy Sports in India" released by NITI Aayog, recommends a light-touch regulatory framework along with the recognition of a single, national-level self-regulatory organisation for Fantasy Sports.[44] The organisation would ensure that the FS formats offered are skill-predominant and adhere to the charter or principles (to be) defined by the self-regulatory organisation.

Given the widely available research into the relevance of skill in Fantasy Sports, and landmark legal judgements that have been in favour of FSPs, industry stakeholders represent that there is merit in providing a more nuanced national-level framework governing Fantasy Sports. By providing recognition to a self-regulatory organisation dedicated to Fantasy Sports, the government can provide assurance to operators, participants, regulators, and investors. At the same time, it may be noted that Fantasy Sports is an evolving sector and the technology and principles underpinning FS will mature over time. Therefore, the regulatory framework should be a light-touch governing framework, covering the core definition and principles of FS. Meanwhile, regulatory actions by various governments at the central, as well as state levels, will continue to impact the potential outlook for the sector.

Self-Regulation of the Fantasy Sports Industry

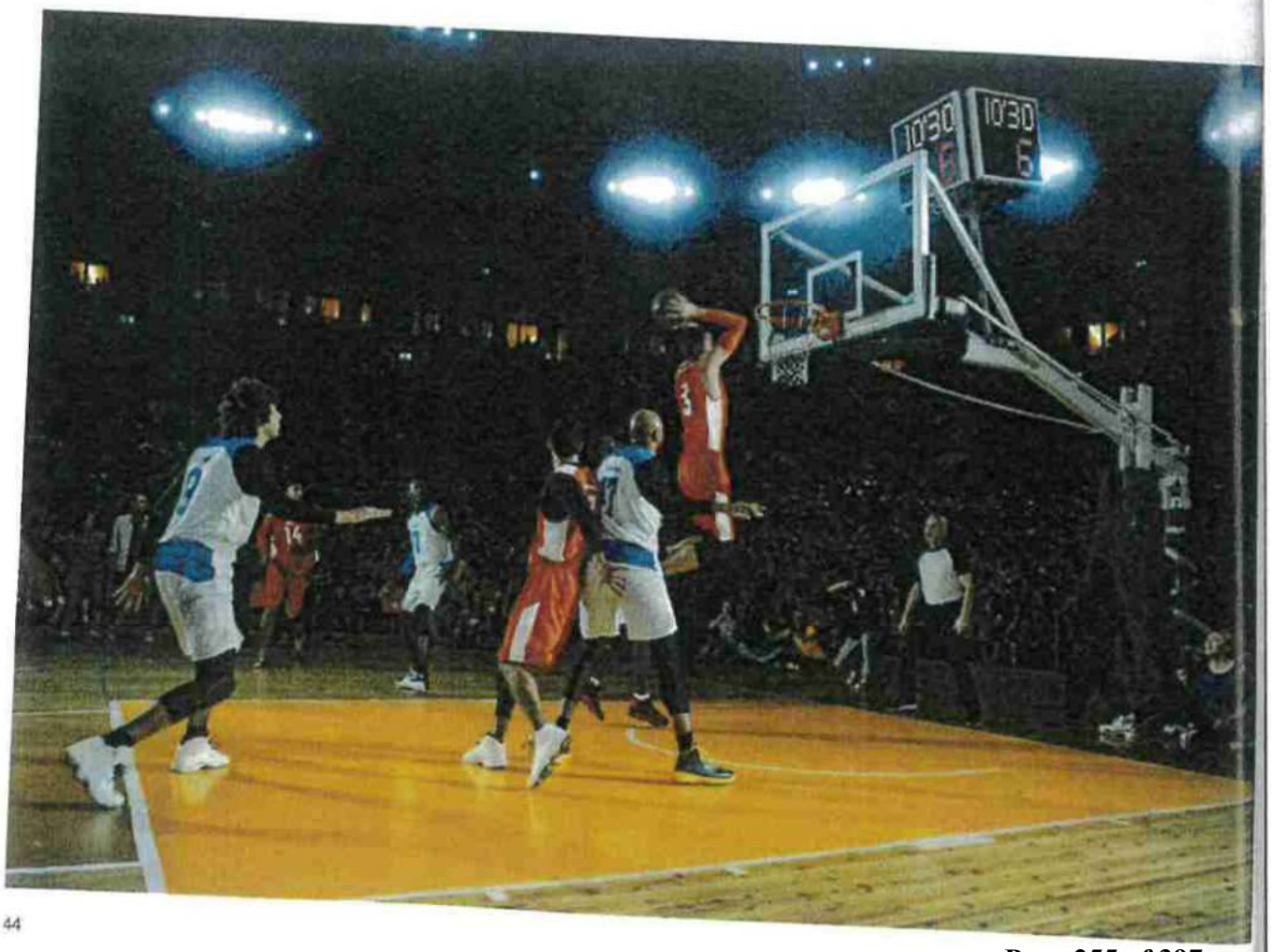
In the absence of a clear and defined unified regulatory framework, NITI Aayog in its working paper on Fantasy Sports Platforms, called for a single self-regulatory body to oversee the Fantasy Sports industry in India. Such a self-regulatory body can set and enforce all rules and standards that pertain to the conduct of its members in the industry.

By virtue of their operations, it is possible that such a body would possess sufficient knowledge and technical expertise to oversee the industry and respond quickly and effectively to technological advancements and disruptions. Such a body, officially recognised by the government as a self-regulatory body, would have the required credibility to manage relations across the operational ecosystem and engage with regulators and government agencies more effectively.

One such example is the Advertising Standards Council of India (ASCI), which is a non-government self-regulatory voluntary organization of the advertising industry in India, committed to the cause of self-regulation in advertising, ensuring the protection of the interest of consumers and that advertisements conform to its code for self-regulation.

Another more recent development has been the directive to the entertainment industry to self-regulate their OTT platforms. To put things into motion, the Government issued guidelines called Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 which defines a 3-tier regulatory mechanism for the OTT platforms.

As the digital space and technology for FS evolves, the regulatory framework for the digital industry will also continue to evolve. To ensure an attuned framework and prevent possible misuse of the regulations, policymakers and stakeholders should continuously engage with each other to implement an effective and balanced regulatory framework.



Formal recognition of FSPs on app distribution platforms

Government recognition, coupled with a stable governing framework, could have broader implications on the operations of Fantasy Sports operators on technological platforms.

With control of app distribution to over 95 percent of Indian digital consumers [46], Google Play Store is the trusted marketplace for all app downloads for much of Indian mobile users. The Play Store works as a "walled garden" where only applications that adhere to the guidelines pertaining to content and security are listed, subject to a review of the application functionality.

Google App Store lists Fantasy Sports as restricted as Google does not allow mobile apps offering pay-to-participate contests on its platform, which is permitted in only 19 countries, subject to appropriate governmental approval and license [46]. This position does not accurately reflect the legal stance on Fantasy Sports per court rulings delivered in various High Courts and ratified by the Supreme Court in India.

The inability to offer an application for download directly from the Play Store may impact the reach FSPs wish to have, as certain users may be uncomfortable with bypassing traditional and secure download methods.

The app distribution platforms need to draft policies which are aligned with the Indian laws, instead of applying a global one-size-fits-all policy which does not augur well with the complex global regulatory and governance environment. A listing on widely used app distribution platforms has the potential to unlock exponential growth for the FS sector.

Perception management

FS' growth and acceptance in India has been grounded on the love for sport and the need for fans to feel involved as well as knowing that there is a consequence and/or a reward, which brings out the competitive side in people. While the ability to compete and win prizes is meant to reward participants who have, over time, leveraged knowledge and garnered skills, the ability to win prizes should not be seen as the prime motivation for their participation on such platforms.

Recently, The Ministry of Information & Broadcasting (MIB), in-line with the guidelines issued by the Advertising Standards Council of India (ASCI), directed that FSP advertisements must carry a disclaimer warning viewers of addiction, which may further have a prohibitive effect. Research, on the other hand, indicates that the time spent on these platforms creating teams is fairly low, while other related activities such as understanding the sport, research, and watching the sport, take up a larger share of the user's time and attention. [47]

A recent survey report quoted that 78 percent of its respondents stated that their primary engagement was with the real-life sporting event, and 73 percent respondents spent 30 minutes or more understanding the sport and gathering knowledge, concluding that Fantasy Sports are not intrinsically addictive. The report also concludes that over 80 percent participants felt their interest in sports increased due to their participation in FS and they became more aware of sports such as kabaddi, hockey and handball. [48]

FS operators must continue focussing on improving customer engagement and fostering healthy competition between participants. This could include subtle messaging in campaigns and promotional activities, alteration in the content and web designs to ensure a suitable balance between messaging on contest outcomes and sporting event participation.

Furthermore, with the prevalence of social media, the potential for critical media stories to be amplified and damage the credibility of a company and the associated industry is high. Given the low barriers of entry, it is possible for an unregulated FSP to launch an application quickly that skirts the definition of chance and skill, resulting in lawsuits or negative publicity tarnishing the reputation of responsible and regulated operators. It is therefore critical for the industry to ensure that adherence to guidelines and regulatory frameworks are in place for all FSPs to manage industry and user perception.

Mergers and acquisitions

While the top five FSPs contribute to over 90 percent of the revenue and registered user base, the sector offers plenty of room for newer platforms to emerge and a huge potential market to tap into, and they continue to strive to gain better market opportunities.

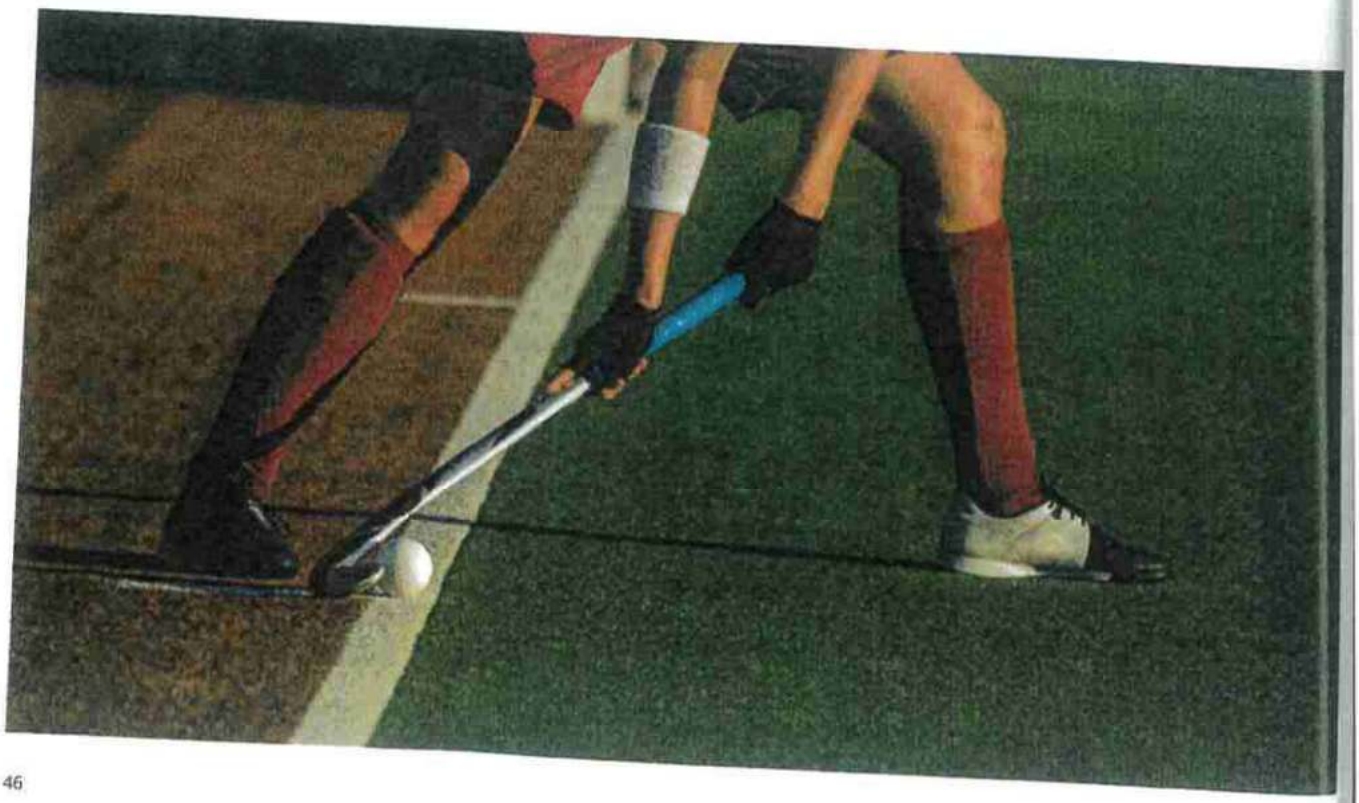
Our discussions with industry experts reveals that the current focus, for most FSPs, is on expansion by innovation and maximising engagement, where consolidation remains a distant possibility. M&A, as a growth lever, is not very attractive right now given that there are no synergies to be gained through acquisitions and the user base may even be largely overlapping.

As this sunrise sector matures, we might see the growth slow down, the services offerings mature, and operators look to merge or acquire for greater market shares, economies of scale, drive efficiencies through synergies, lower operational and legal costs, help build a footing in the industry or seek ecosystem benefits through partnerships and tie-ins.

Technology disruptions

The growth trajectory of FS across the world has its roots in the technological disruptions that have taken place in the mobile industry. In India, this can be traced to the affordability of smartphones, the cellular data price wars, the rise of payment gateways during demonetisation, and the availability of cloud-based technology to support the scale and surge of demand during peak sporting events. The rise of the industry has also been shaped by the ability of operators to convert real-time sport performances into actionable data.

As an industry shaped by technology, it is likely that the relationship will extend both ways with the FSP adapting to new and resilient technologies and contributing to the growth of the technology ecosystem through advances in analytics or adoption of technologies such as payment interfaces. It is also important for FSPs to adopt and adapt technologies from the viewpoint of staying relevant in an industry, where the availability of alternative platforms is high and customer loyalty to a single platform is low. With the core mechanics of the fantasy platform remaining the same, a key differentiator could be the experience for the customer—that is where the stable and intuitive customer experience across platforms and innovative technology can help FSP operators differentiate themselves from the others. However, such differentiators can be easily replicated and therefore the operators need to constantly innovate and stay abreast with the latest technology disruptions.



Unlocking growth within the Fantasy Sport industry

Given that only a fraction of the sport following base in India currently makes up the FS registered user base (an estimated 13 crore users out of a total sports fan base of 80 crore), the larger piece of the pie remains untapped. The potential for Indian FS operators to unlock value in the Indian market by expanding user base and exposing users to underappreciated and unexplored sports, new sporting events and potentially covering more domestic sporting leagues is significant.

With Fantasy Sports users having a deeper engagement with live sports, FS can not only allow regional leagues to reach out to a wider audience but also promote viewership.

Protecting users

FSPs have taken up initiatives to ensure that there is responsible play on their platforms, such as not allowing users below the age of 18 to take part in pay-to-participate contests, or warning users if losses exceed a defined threshold, or even preventing users from participating beyond a defined number of contests for a single match. Over time, with the influx of new users, FSPs will need to strengthen frameworks to ensure that the customer experience continues to be driven towards the positive effects of Fantasy Sports such as healthy competition, entertainment, and better engagement with the sport of choice.

In an effort to make the playing environment safe and for the users to feel heard, FIFS has established the office of Ombudsman and Ethics Officer to protect the interests of its members and their users and the industry through an oversight of integrity, governance, and systems. The FIFS Ombudsman office is established to receive, consider, investigate, or adjudicate any complaints, disputes, or issues related to the matters covered under the Terms of Reference and headed by Justice Arjan Kumar Sikri, an eminent jurist and a former Judge of the Supreme Court of India.[69]

Managing data privacy

FSPs can both, generate and consume a significant volume of customer data over the course of its operations and it is imperative to ensure that there is the right level of security and protection afforded to sensitive customer data. Given the legal and regulatory landscape, the operators have grown cognisant and are putting reasonable checks and balances to ensure compliance.

The operators are endeavoring to ensure protection of user data shared for processing (collection, recording, alteration, use, and disclosure) or collected for a specific and lawful purpose. Users are generally informed about the purpose of their data being collected and processed, and are notified of any alterations in data collection and management policies.

Concluding Remarks

The FS industry has been recognised for its tremendous growth potential and ability to drive economic and technological growth. Apart from creating an economic impact driven by its own size and scale, the sector also attracts FDI, aiding the growth in forex reserves, and promotes other ancillary industries by creating a demand for resources.

FS being a technology-based sector helps create a demand for future-ready skills and promotes job creation indirectly in other associated sectors too. Most importantly, it plays a role disproportionate to its scale in creating and embedding a culture of sports in India. It helps bring sports fans closer to sports that have either not received sufficient attention in the past or aren't even played in our country.

FS also enables a multi-sport ecosystem, leading to an increase in sports engagements which can contribute to development of a healthy sport culture in the country. This helps draw investments in the sporting industry and promotes commerce, further leading to development of sporting infrastructure, which forms the foundation for sports development at grassroot level.

Citizen involvement and support during the Tokyo Olympics is a testament of how a country can benefit from its people waking up to a multitude of sports. From the support our athletes received to the rise of youth aspiring to take up a sport such as equestrianism, canoeing, or fencing, exposure to a wide array of sports can help India develop into a strong sporting nation and Fantasy Sports platforms can play a significant role in catapulting us in that direction. Furthermore, Fantasy Sports and long-run tournaments can complement each other in helping sports such as women's cricket, hockey, and football, gain the necessary attention and recognition.

In the imminent future, FSPs should continue to invest in innovation and customer experience, and focus on customer acquisition, engagement, and retention by delivering a more secure, seamless, and user-centric experience.

At the same time, there is a call for a robust, unified regulatory framework, bringing an end to the ambiguity and multiplicity of regimes. Such a framework, with strong checks and balances, would usher in greater accountability and transparency, improve the ease of doing business, while also keeping operators from turning delinquent through stringent controls.

The growing popularity of the sector and its potential in terms of its contribution to the economy, generating employment opportunities, driving investment, innovation in technology, entertainment, and sports development speaks for itself. A unified regulatory framework and credible recognition is what is needed to help Fantasy Sports unlock its full potential.

Appendix

Predominance of skill in Fantasy Sports

Numerous studies have indicated over the years that Fantasy Sports gaming principles are structured around the application of skill by the user[50] for each action performed within the game.

In Fantasy Sports, the participant is building the team based on the performance of the individual for whom data on consistency and performance across previous events is readily available. In selecting the team, the participant is applying knowledge or skill.

To answer the question of whether skill has a dominant role to play in Fantasy Sports, one may employ a data-driven approach. An MIT study suggests that there is a statistically higher win fraction for people who play a lot versus a little. In the same study, the researchers devised an algorithm that created randomly generated fantasy sports teams from the same pool of players that were available to the users and ran hundreds of thousands of games. The researchers observed that the fantasy users beat the computer-generated ones, again indicating predominant level of skill involvement. Interestingly the study was able to conclude that Fantasy Sports participation required a higher range of skill than what is needed by a mutual fund manager to manage a portfolio.[51]

Additionally, an IIMB and Cartesian research[52] used multiple hypothesis testing techniques to test "skill dominance" based on three years of anonymised data provided by Dream11. They found strong evidence that learning, consistency, and strategy-based usage affect the outcome in Dream11's format of Fantasy Sports. The inferences indicated that player selection has a huge influence on achieving high scores, indicating skill dominance. Another joint academic study by Massachusetts Information Technology (MIT) and Columbia University concludes that there is overwhelming evidence that the outcomes of FS are driven by the predominance of skill.[53]

The Honourable Supreme Court of India observed that although in a game of skill the element of chance necessarily cannot be eliminated, success depends principally upon the superior knowledge, training, attention, experience, and adroitness of the user.[54] This is why stock market trading that operates under an appropriate regulatory environment falls within the legal realm, as it requires diligent market analysis and the individual's calculated risk-taking ability.

While exploring whether FS is a game of skill or chance, it is pertinent to note that judicial precedents have relied on the requirement of a substantial degree or preponderance of skill.[55] Participants must understand weather patterns, injuries, fitness levels, current form of a player, amongst other causative factors to make a calculated decision. Thus, knowledge of the game, combined with an understanding of interactions amongst the factors mentioned above is required.

Notwithstanding the favourable court orders, FSPs have been responsible and transparent in their operations. They have proactively taken the following steps that endeavour to maintain a preponderance of skill over chance in FS outcomes:

01. The Charter and the Ombudsman of FIFS clearly sets down guidelines for the platform to be transparent in terms of transactions as only digital payments are allowed for the pay-to-play platform.[56]
02. Team selection process is transparent, and the drafted teams are visible to users on the platforms. The credits / points are earned by the users based on the performance of the player in the actual game and as per predetermined rules.
03. Prohibiting app/ platform services to minors: Age has been restricted to 18+ years and winners can claim their wins only after they provide proof of their age through a robust KYC mechanism.
04. The contests offered are based on a complete real-world match and not dependent on any particular outcome.
05. High transparency: The self-regulated nature of the industry promotes transparency of operations and establishment of standards that discourage members from unlawful activities. Measures are taken for grievance redressal through a robust redressal mechanism through an ombudsman.
06. Responsible Play Policies: Platforms allow users to effectively manage their bankroll for playing games. Users can set daily, weekly to monthly deposit limits and transaction counts suitably. Some companies notify the users once they exceed their average spend on the platform.

References

1. F. &. Members, Interviewee, Primary Research & Analysis, [Interview]. 4 August 2021.
2. Rameesh Kallasam, Priyanka Mathur, "Fantasy Sports - Adding Value to the Indian Sporting Ecosystem," indiatech, 2020.
3. Allied Market Research, "Fantasy Sports Market : Global Opportunity Analysis and Industry Forecast, 2021 - 2027," Allied Market Research, 2020.
4. Fantasy Sports & Gaming Association, "Industry Demographics," 2017.
5. Arizton Advisory & Intelligence, "Fantasy Sports Market - Global Outlook and Forecast 2021-2026," Arizton, 2021.
6. IBEF Research, "Indian Fantasy Sports Platforms Report Three-Fold Jump in FY20 Revenue," India Brand Equity Foundation, 2020.
7. The Business Research Company, "Fantasy Sports Global Market Report 2021: COVID-19 Growth And Change," 2021.
8. Federation of Indian Fantasy Sports (FIFS) & Kantar, "Understanding the sports consumption behaviour among fantasy sports users," 2020.
9. Broadcast Audience Research Council India, "Cricket in India: It's not just a game," 2019.
10. The Indian Federation of Sports Gaming (IFSG) & Nielsen, "Fantasy Sports: Measuring its impact on actual sports consumption," Nielsen, 2019.
11. Statista, "Share of televised sports viewership across India in 2019," 2021.
12. Deloitte, "Women's sports gets down to business: On track for rising monetization," TMT Predictions 2021, 07 December 2020.
13. B. L. Bureau, "Euro viewership on SonyLIV overtakes FIFA World Cup 2018," Business Line, 2021.
14. Google, "Year in Search 2020," Google, [Online]. Available: https://trends.google.com/trends/yis/2020/GLOBAL/. [Accessed 5 August 2021].
15. Google, "Year in Search 2020," Google, [Online]. Available: https://trends.google.com/trends/yis/2020/IN/. [Accessed 10 August 2021].
16. "Tokyo Olympics | Indian hockey ends 41-year wait for Olympic medal," 5 August 2021, [Online]. Available: https://www.thehindu.com/sport/hockey/india-beats-germany-5-4-to-win-olympic-mens-hockey-medal-after-41-years/article35736495.ece. [Accessed 10 August 2021].
17. J. Boyd, "The Top 20 Most Followed Instagram Accounts," Brandwatch, 4 August 2021. [Online]. Available: https://www.brandwatch.com/blog/top-most-instagram-followers/. [Accessed 10 August 2021].
18. Shri Varun Gumber V. UT of Chandigarh & ORS, 2017.
19. "India Population," Worldometer, 2020. [Online]. Available: https://www.worldometers.info/world-population/india-population/. [Accessed 5 Aug 2021].
20. Statista, "Smartphone penetration rate in India from financial year 2016 to 2020, with estimates until 2025," Statista, 10 May 2021. [Online]. Available: https://www.statista.com/statistics/1229799/India-smartphone-penetration-rate/. [Accessed 4 Aug 2021].
21. Cable UK, "Worldwide mobile data pricing 2021," 2021.
22. National Payments Corporation of India, "UPI Ecosystem Statistics," 2021.
23. Federation of Indian Fantasy Sports, "The Business of Fantasy Sports," 2020.
24. N. Alawadhi & D. Choudhury, "Dream11 parent Dream Sports raises $840 mn ..," Business Standard, 25 November 2021.
25. A. Ahaskar, "Abhijit Ahaskar," Mint, 04 Feb 2021.
26. P. Abrar, "Gaming start-up Mobile Premier League valued at $2.3 bn ..," Business Standard, 16 September 2021.
27. F. o. S. Gaming, "Taxation of Fantasy Sports Gaming Market," 2019.
28. PTI, "Need to create sporting culture, define our aspiration: Abhi ..," The Times of India, 25 August 2017.
29. R. Mandani, "Dream11 wins IPL title rights at 50 percent discount," Hindustan Times, 19 August 2020. [Online]. Available: https://www.hindustantimes.com/cricket/ipl-2020-title-sponsorship-bcci-awards-right-to-dream11-reports/story-zPIUt2Y7Q0GaxNLod080dN.html. [Accessed 9 August 2021].
30. ITW Press Release, "MyTeam11 acquires Title Sponsorship rights of ITW 2019," Global, ITW, 06 Sep 2019. [Online]. Available: https://www.itwglobal.com/myteam11-acquires-title-sponsorship-rights-of-india-tour-of-west-indies-2019/.

31. E. Bureau, "My11Circle picks up deal worth Rs 15 crore as Lanka T20 Premier League's title sponsor," November 2020.
32. ANI, "Tokyo 2020: Indian Olympic Association names MPL, Amul as sponsors," ANI, 17 June 2021.
33. B. M. Advisory, "BCCI announces MPL Sports as Official Kit Sponsor for Team India," 2020.
34. B. Online, "60% of fantasy sports users claim to follow more sports now: Kantar & FIFS," Financial Express, 8 August 2020. [Online]. Available: https://www.financialexpress.com/brandwagon/60-of-fantasy-sports-users-claim-to-follow-more-sports-now-kantar-fifs/2058176/. [Accessed 8 August 2021].
35. U. Malvania, "IFSG report: Fantasy sports players watch more sports than non-fantasy sports players," Brand Equity, 3 October 2019. [Online]. Available: https://brandequity.economictimes.indiatimes.com/news/business-of-brands/nielsen-ifsg-report-fantasy-sports-players-watch-more-sports-than-non-fantasy-sports-players/71384145. [Accessed 10 August 2021].
36. FIFS, "About Stars of Tomorrow (SOT)," FIFS, [Online]. Available: https://fifs.in/stars-of-tomorrow/. [Accessed 5 Aug 2021].
37. Fantasy Sports Platform Dream11 Retains 5x More Customers with Advanced User Insights, 2021.
38. S. Agnihotri, "FanCode acquires FanDuniya to enhance sports data analytics," Insidesport, 26 October 2020. [Online]. Available: https://www.insidesport.co/fancode-acquires-fanduniya-to-enhance-sports-data-analytics/. [Accessed 12 August 2021].
39. [Online]. Available: https://www.fantasylabs.com/ ; https://www.advancedsportsanalytics.com/ ; https://datasportsgroup.com/olympics/.
40. Federation of Indian Fantasy Sports (FIFS) & Nielsen, "Scoring big with sports gaming," 2018.
41. "Constitution of India," 9 September 2020. [Online]. Available: https://legislative.gov.in/sites/default/files/COI.pdf.
42. ET Bureau, "Supreme Court upholds Dream11 fantasy sports format as game of skill," The Economic Times, 2021.
43. R. Chandrasekhar, "Over 6,000 URLs, accounts or websites blocked in 2021: Chandrasekhar," Business Standard, 2022.
44. N. Ayog, "Guiding Principles for the Uniform National-level Regulation of Online Fantasy Sports Platforms in India," 2020.
45. "Mobile Operating System Market Share in India," [Online]. Available: https://gs.statcounter.com/os-market-share/mobile/india. [Accessed 8 Aug 2021].
46. "Real-Money Gambling, Games, and Contests," Google, [Online]. Available: https://support.google.com/googleplay/android-developer/answer/9877032?hl=en&ref_topic=9877466. [Accessed 8 August 2021].
47. "Ministry of Information & Broadcasting," December 2020. [Online]. Available: https://mib.gov.in/sites/default/files/Advisory.pdf.
48. Consumer VOIC, "Debunking Myths Around Fantasy Sports," 2021.
49. Federation of Indian Fantasy Sports (FIFS), "Ombudsman," [Online]. Available: https://fifs.in/ombudsman/.
50. V. Misra, D. Shah and S. V. Ranganathan, "Is it Luck Or Skill: Establishing Role Of Skill In Mutual Fund Management And Fantasy Sports," [Online]. Available: https://devavrat.mit.edu/publications/is-it-luck-or-skill-establishing-role-of-skill-in-mutual-fund-management-and-fantasy-sports/.
51. "Luck and the Law: Quantifying Chance in Fantasy Sports and Other Contests".
52. "Fantasy Sports: A Game of Skill or Chance".
53. D. S. a. S. V. S. R. Vishal Misra, "Is It Luck Or Skill: Establishing Role Of Skill In Mutual Fund Management And Fantasy Sports," MIT.
54. Dr. K.R. Lakshmanan vs State of Tamil Nadu And Anr on 12 January, 1996.
55. "FIFS Charter," FIFS, [Online]. Available: https://fifs.in/charter/. [Accessed 8 August 2021].

Key contacts

Deloitte Touche Tohmatsu India LLP
One International Center, Tower 3, 25th Floor
Senapati Bapat Marg, Prabhadevi
Mumbai – 400 013, Maharashtra, India
Tel: +91 22 6185 4000
Website: www.deloitte.com/in

Jehil Thakkar
Partner, Deloitte India
jehilthakkar@deloitte.com

Prashanth Rao
Partner, Deloitte India
prashanthrao@deloitte.com

Vivek Ramakrishnan
Director, Deloitte India
vivekrama@deloitte.com

Federation of Indian Fantasy Sports
Innov8, Regal Building, 69,
Connaught Place, New Delhi,
Delhi 110001
Website: https://fifs.in/

Anwar Shirpurwala
CEO, Federation of Indian Fantasy Sports
anwar@fifs.in

Contributors

Akshay Sudhir
Mrinal Sharma
Sudipta Samanta
Aryamaan Ghosal
Harsh Varma
Sukriti Tayal
Sharvari Shah
Ibadat Rai

Justice Dipak Misra
Former Chief Justice of India

Annexure-IV

Privileged & Confidential

17 August 2022

Mr. L. Badri Narayanan &
Ms. Charanya Lakshmikumaran, Partners,
Lakshmikumaran & Sridharan, Attorneys,
No. 5 Link Road,
Jangpura Extension,
New Delhi – 110 014.

Sub : In Re : Case for Opinion on behalf of the Querists, E-Gaming Federation (EGF) and Federation of Indian Fantasy Sports (FIFS)

Dear Mr. Badri Narayanan & Ms. Lakshmikumaran,

In response to your queries dated 28.07.2022, the opinion on behalf of the Querists, E-Gaming Federation (EGF) and Federation of Indian Fantasy Sports (FIFS), with respect to the issue of applicability of Goods and Services Tax (GST) on 'games of skill', and whether such games of skill are covered within the scope of "betting" or "gambling" so as to attract GST, is enclosed herewith.

Regards,

Justice Dipak Misra
Former Chief Justice of India

Encl :
1. Index to Legal Opinion
2. Legal Opinion

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

Privileged & Confidential

INDEX

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

Privileged & Confidential

OPINION BY JUSTICE DIPAK MISRA
FORMER CHIEF JUSTICE OF INDIA

17 August 2022

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

Privileged & Confidential
17 August 2022

LEGAL OPINION (*Ex parte*)

Querists : **E-Gaming Federation (EGF) and Federation of Indian Fantasy Sports (FIFS)**

Through : **Mr. L. Badri Narayanan & Ms. Charanya Lakshmikumaran, Partners, Lakshmikumaran & Sridharan, Attorneys, No. 5 Link Road, Jangpura Extension, New Delhi – 110 014**

Subject : **In Re : Case for Opinion on behalf of the Querists, E-Gaming Federation (EGF) and Federation of Indian Fantasy Sports (FIFS), with respect to the issue of applicability of Goods and Services Tax (GST) on 'games of skill', and whether such games of skill are covered within the scope of "betting" or "gambling" so as to attract GST**

---

1. **Factual Exposition** :

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

1.1 The exposition of the relevant facts is that the Querists are technology-based organizations by the name and style of E-Gaming Federation (EGF) and Federation of Indian Fantasy Sports (FIFS) whose members offer certain skill-based games to be played over the internet through their platforms, wherein users can register themselves, through web/mobile-applications on such platforms, upon payment of a certain fee and assemble/select imaginary or virtual teams composed of proxies of real players of a professional sport.

1.2 To appreciate the impost of GST on Online Gaming Industry, it is essential to scan and understand its basic manner and method of operation. The Online Skill Gaming Industry is composed of various operators providing an online platform for individual users to connect and engage in playing various formats of games. Online skill gaming platform operators offer various games of skill such as fantasy games, card games (rummy, poker), chess, bridge, brain games, etc. Needless to emphasize, different types of games do require different skills, such as knowledge of the game, sports, statistical analysis, familiarity with rules, experience, reflexes, practice, hand-eye coordination,

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

presence of mind, concentration, etc. In such games, skill is the dominant factor. On such platforms, players compete with other players in individual game formats, while predominantly relying on their skills and specified rules to win the games. The competitiveness, relevant skills, expertise and mental exertion are absolutely requisite for winning online skill games on the platform.

1.3 Let me presently focus on skill-based games and dwell upon the nuances it embraces. A *fantasy sport*, for example, is a type of game, often played using the Internet, where participants assemble imaginary or virtual teams composed of proxies of real players of a professional sport. It has been observed that in the recent years, many technology-based companies provide a platform to their users for playing sports and games on a virtual platform, such as fantasy cricket, football, kabaddi, basketball and hockey, allowing their users to register and play various games, to form their own teams made up of real players for cricket, football, kabaddi, etc. In other words, a fantasy sport is a type of online game where participants assemble imaginary or virtual teams of real players of a professional sport. These teams compete based on the statistical

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

performance of those players in actual games. This performance is converted into points that are compiled and totalled according to a roster selected by each fantasy team's manager. Similarly, other skill-based card games such as rummy are also a type of game which are often played on the internet, where the organizers provide a platform for the players to be able to play against each other using their skills. An analogy can be drawn between the above mechanism/model with what a stock trader does with respect to stock market, wherein users/investors, by virtue of their skill, statistics, experience, etc., take upon a calculated risk as an informed choice on the performance of stocks. Statistics is associated with memory and psychological analysis. It is founded on keen understanding of the ability exposited by certain players in real situation. In fact, it involves skill with nuanced mindset. Another analogy can be drawn between the above mechanism/model with what a coach does with choosing players from a team to play a match, where the decision is taken by the coach on the basis of the form of the players and the statistics of the player's performance in the said season. This involves skill with a nuanced mindset as well.

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

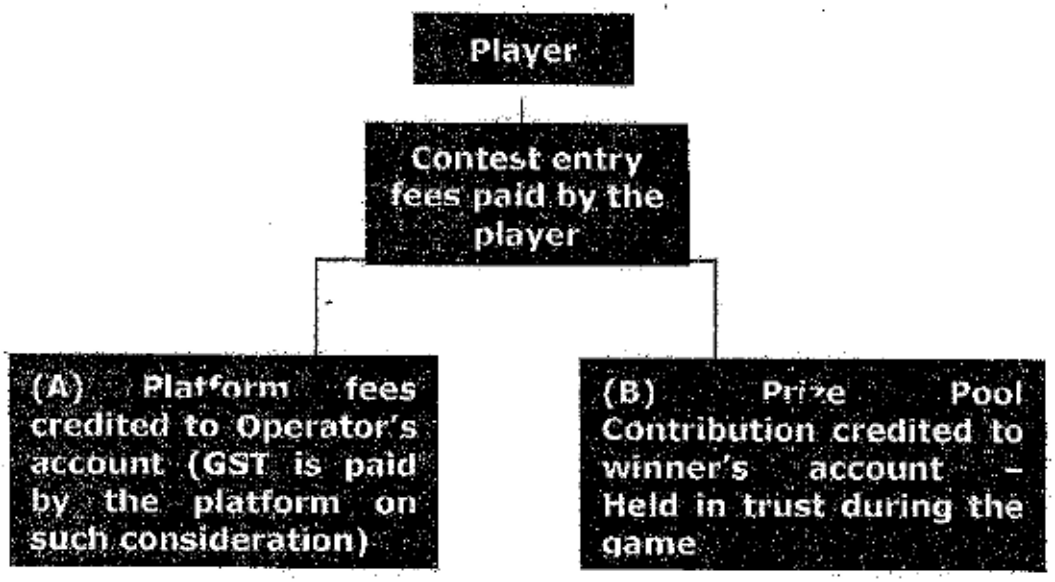
Justice Dipak Misra
Former Chief Justice of India

1.4 Now, it is condign to advert to the revenue model as the Querists have apprised me. The Users or 'players' of such online games are pre-notified of the specific consideration payable towards the supply of facilitation services and provision of gaming platforms by the operators, in advance. Generally, as a revenue model, users initially have to pay an amount of X rupees, towards as platform fees which is retained by the gaming company/platform and an amount of Y rupees which is transferred towards the prize pool amount for the game, i.e., a pool of funds for purposes of using such pool to distribute monetary rewards to users. The players are informed about the contribution towards the prize pool payable to the winners of the concerned game, before joining any game. The prize pool contribution is held by the online gaming operator in trust / independent account until the completion of the game, subsequent to which the entire prize pool amount is distributed to the winners. The entire above information in respect of the manner of bifurcation of the amount collected for consideration of services and contribution towards prize-pool is duly communicated to all the players through the *'Terms & Conditions'* available on the website.

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

1.5 **The payment made by the user/player for services from the online gaming operator and contribution to prize pool is pictorially depicted as follows:**



1.6 It is informed that the amount depicted as (A) above, i.e., the *platform fees*, is retained by the gaming platforms as a '*consideration*' for such platform services provided to the users/players. Users/players are also informed about (B), i.e., the contribution towards the '*prize pool*' payable to the winners of the games of skill. The Users/players understand that the platform only provides platform services for which it charges platform fees only. The contribution towards the prize pool is not a consideration for the platform services.

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

Privileged & Confidential
17 August 2022

1.7 The above model and the '*prize pool*' is akin to a fund held by the platform in trust in a fiduciary capacity, for a brief period of time *(i.e., from commencement of the game till its completion)*, subsequent to which the prize-pool amount is distributed among the winners, in accordance with the announced prizes of the game. Prize pool is merely collection of amount staked by the Users/players among themselves as winnings for the winner to win. The platform does not have any right over such prize-pool fund / amount which it merely holds in trust on behalf of the winners for a certain period of time. Thus, as far as the amount in prize-pool is concerned, it cannot be held to be a '*consideration*' in return of any services provided by the platform. In other words, since no services are provided in return for the money held in the prize-pool, the same cannot be called a *supply* of either goods or services.

1.8 In the obtaining factual expose`, the Queries posed by the Querists are to be dealt with and answered.

2. **Queries :**

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

2.1 The Queries that have been posed for opinion are :

A) What is the meaning of 'betting' in the context of GST provisions provided in paragraph no. 6 of Schedule III of the Central Goods & Services Tax Act, 2017? Will it include 'games of skill'?

B) Whether payment for game entry amount with clear segregation of Prize Pool and Platform fee for playing online skill-based games is covered within the meaning of "betting" or "gambling" and can, therefore, be considered as supply of goods (actionable claim) attracting GST?

C) Whether the Supreme Court judgment of *Skill Lotto Solutions v. Union of India* is applicable and relevant for the online skill-based games?

3. **Analysis and Reasoning** :

Query A :

What is the meaning of 'betting' in the context of GST provisions provided in paragraph no. 6 of

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

Schedule III of the Central Goods & Services Tax Act, 2017? Will it include 'games of skill'?

Response to Query A :

3.1 In respect of the above query, it is relevant to reproduce the text of Entry No. 6 of Schedule III of the *Central Goods & Services Tax Act, 2017* which is as under:

> *"SCHEDULE III*
> *[Section 7]*
>
> *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.***"

3.2 It is seen that Schedule III to the CGST Act provides for a list of supplies which are neither to be treated as taxable supplies of goods nor services or both. The above-mentioned Entry No. 6 of Schedule III lists '***Actionable claims, other than lottery, betting and gambling***' as a non-taxable supply. In other words, all actionable claims (other than lottery, betting and gambling) are exempt from

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

payment of GST, as they are not to be treated as taxable supplies of neither goods nor services or both.

3.3 With respect to ascertaining the legal meaning of betting and gambling, it is apt to refer to the Constitution and appreciate that Article 246 read along with Entry 34 of List-II (State List) of the Seventh Schedule of the Constitution of India provides that the legislatures of the States shall have the power to make laws with respect to "*betting and gambling*"; however, the Constitution by itself does not define the term "*betting*".

3.4 A few dictionary-derived meanings for the terms "*betting*" and "*gambling*" are reproduced hereinbelow.

3.5 According to the ***Black's Law Dictionary***[1], '*gambling*' is defined as *"the act of risking something of value for a chance to win a prize"*, hence also within the realm of wagering. Gambling, in a nutshell, is payment of a price for a chance to win a prize. ***Sir William Reynell Anson***, a British jurist and author, defines '*bet*' as "*A promise to give*

[1] Bryan A. Garner, *Black's Law Dictionary*, (8th Ed., West Publishing Co.) 701, 2004

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

money or money's worth upon the determination or ascertainment of an uncertain event."

3.6 Further, from the ***Black's Law Dictionary***, the meanings of the terms "*betting*", "*wagering*" and "*gambling*" may be extracted as follows:

Bet – *something (esp. money) staked or pledged as a wager*

Wager – *money or other consideration risked on an uncertain event; a bet or gamble. A promise to pay money or other consideration on the occurrence of an uncertain event.*

Gambling – *the act of risking something of value, (esp. money) for a chance to win a prize. An agreement between two or more persons to play together at a game of chance for a stake or wager which is to become the property of the winner, and to which all contribute.*

3.7 As per ***Venkataramaiya's Law Lexicon***, the terms "*betting*" and "*gambling*" have been defined as follows:

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

'Betting' *- a contract by which two or more parties agree that a sum of money, or other thing, shall be paid or delivered to one of them on the happening or not happening of an uncertain event.*

'Gambling' *- To play, or game, for money or other stake; hence to stake money or other thing of value on an uncertain event. It involves not only chance, but a hope of gaining something beyond the amount played.*

3.8. Further, the ***Advanced Law Lexicon*** seeks to differentiate the acts of betting and gambling by defining both of them as follows:

"Betting" *means to pledge as a forfeit to another who makes a similar pledge in return, on a future contingency, in support of an affirmation or opinion.*

"Gambling" *according to the common use and understanding of that word is a generic term, and includes within its meaning every act, game, and contrivance by which one intentionally exposes money or other thing of value to the risk or hazard of loss by chance.*

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

3.9 On several occasions, various jurisdictional Courts have interpreted the terms "*betting*" and "*gambling*". The Hon'ble Madras High Court, in ***Public Prosecutor v. Verajlal Sheth***[2], explained the distinction between '*wagering*', '*betting*' and '*gaming*' as under:

> *"3. The principal distinction between gaming and betting or wagering is thus immediately apparent; in gaming the stake is laid by the players upon a game, the result of which may depend to some extent upon the skill of the players, but in a bet or wager, the winning or losing of stake depends solely upon the happening of an uncertain event.*
> *xxxx"*

3.10 In ***Junglee Games India Private Limited v. State of Tamil Nadu***[3], the Hon'ble Madras High Court has held that the term '*Betting*' in Entry 34 of the List-II of the Seventh Schedule of the Constitution of India is limited to betting on activities based on chance only. The relevant portion is reproduced below:

[2] AIR 1945 Mad 164 : (1945) 1 Mad LJ 163
[3] 2021 SCC OnLine Mad 2762 : AIR 2021 Mad 252 : (2021) 5 Mad LJ 625

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

"125. It is in such light that "Betting and gambling" in Entry 34 of the State List has to be seen, where betting cannot be divorced from gambling and treated as an additional field for the State to legislate on, apart from the betting involved in gambling. Since gambling is judicially defined, the betting that the State can legislate on has to be the betting pertaining to gambling; ergo, betting only on games of chance. *At any rate, even otherwise, the judgments in the two Chamarbaugwala cases and in K.R. Lakshmanan also instruct that the concept of betting in the Entry cannot cover games of skill. .....*

xxxx
xxxx

126. *In the State bringing in the Ordinance in November, 2020, which was later adopted as the Amending Act, the legislature erred in expanding its field of legislation by widening the scope of gambling and ascribing a connotation to betting that the relevant Entry in the State List does not envisage.* ***It is true that the Entry "Betting and gambling" appears, at first blush, to cover the possible distinct fields of betting and gambling; but the law as declared defines gambling as a game of chance which skill cannot control; and, the authority conferred on a State legislature by the relevant Entry appears to be confined to the arena of betting in games of chance. Viewed in such perspective, the***

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

> ***impugned legislation does not appear to be genuinely referable to the field of legislation allotted to the State under Entry-34 of the State List.'***
>
> **[Emphasis supplied]**

3.11 Further, the Hon'ble Karnataka High Court, in the case of ***All India Gaming Federation v. State of Karnataka***[4], has also similarly interpreted the scope of Entry 34 of the State List and defined the term '*Betting*' as follows:

> ***"IX.*** *xxxx*
> *The two words namely "Betting" and "gambling" as employed in Entry 34, List II have to be read conjunctively to mean only betting on gambling activities that fall within the legislative competence of the State. To put it in a different way, the word "betting" employed in this Entry takes its colour from the companion word "gambling".*
> *xxxx"*

3.12 Finally, the words '*betting*' or '*gambling*' find place in the *Finance Act, 1994*. As per Section 65B (15) of the *Finance Act, 1994*:

> ***'Betting or gambling** means putting on stake something of value, particularly*

[4] 2022 SCC OnLine Kar 435

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile: +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

> ***money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring.***"

3.13 The scope of "*betting and gambling*" came to be considered by the Hon'ble Supreme Court in the case of ***R.M.D. Chamarbaugwalla v. Union of India***[5].

3.14 In ***State of Bombay v. R.M.D. Chamarbaugwala***[6], the Hon'ble Supreme Court extensively discussed '***games of chance versus games of skill***'. The pertinent observations by the Hon'ble Court are extracted below:

> "***17.*** *xxxx*
> *The Court of Appeal in the judgment under appeal has shown how opinions have changed since the earlier decisions were given and it is not necessary for us to discuss the matter again. It will suffice to say that we agree with the Court of Appeal that a competition in order to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill.* ***Therefore, a competition success wherein does not depend to a substantial degree***

[5] AIR 1957 SC 628
[6] 1957 SCR 874 : AIR 1957 SC 699

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

> ***upon the exercise of skill is now recognised to be of a gambling nature.***
> *xxxx*"
>
> **[Emphasis added]**

3.15 With regard to fantasy sports, the Hon'ble Bombay High Court, in the case of ***Gurdeep Singh Sachar v. Union of India***[7], has held that fantasy sports are games of skill and not betting or gambling. It has been, *inter alia*, held as under:

> "***10.*** *xxxx*
> *There is no merit in the submission that the result of their fantasy game/contest shall be considered as merely by chance or accident notwithstanding involvement of substantial skill. The petitioner claims that the result would depend largely on extraneous factors such as, who amongst the players actually play better in the real game on a particular day, which according to the petitioner would be a matter of chance, howsoever skilful a participant player in the online fantasy game may be. The petitioner has lost sight of the fact that the result of the fantasy game contest on the platform of respondent No.3, is not at all dependent on winning or losing of any particular team in the real world game. Thus, no betting or gambling is involved in their fantasy games. Their result is not dependent upon winning or losing of any*

[7] 2019 SCC OnLine Bom 13059 : (2019) 30 GSTL 441 : (2020) 72 GSTR 75

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

particular team in the real world on any given day. In these circumstances, there is no plausible reason to take a contrary view than that taken by the Hon'ble Punjab and Haryana High court, which judgment has already been upheld by the Hon'ble Supreme Court in the SLP filed against the respondent No.3 itself.
xxxx"

3.16 The above judgment was challenged before the Hon'ble Supreme Court as under:

(i) In the case of ***Varun Gumber in SLP (Criminal) Diary No. 35191 of 2019*** praying to pass an order that the High Court has erroneously concluded that fantasy sports is a game of skill. The Hon'ble Supreme Court dismissed the petition on 04 October 2019.

(ii) In ***Gurdeep Singh Sachar in SLP (Criminal) Diary No. 43346 of 2019 and Union of India in SLP (Criminal) Diary No. 41632 of 2019*** praying to dismiss the order passed by the Bombay High Court. The Hon'ble Supreme Court dismissed these SLPs on 12 December 2019 through an order which stated as follows:

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

Privileged & Confidential
17 August 2022

> *"The special leave petitions are dismissed. However, in SLP Diary No. 41632 of 2019, it is open for the Union of India to apply for a review insofar as the GST aspect is concerned before the High Court of Bombay. If this is done within a period of four weeks from today, the review petition will be disposed of on merits."*

(iii) Further, the Union of India, in the light of the judgment of the Bombay High Court, filed a clarification application in ***Misc. Application No. 502 of 2020*** in the above SLP praying to modify an order dated 12.12.2019 passed by the Hon'ble Supreme Court to permit the Union of India to file a review even with respect to the issue of whether fantasy sports amounts to gambling / betting in order to decide the issue of GST. The clarification application was dismissed by the Hon'ble Supreme Court with the following order on 31.01.2020:

> *"Having heard learned senior counsel appearing on behalf of applicant-respondent No.2-the PIL petitioner before the Bombay High Court, we are of the view that this interlocutory application for clarification deserves to be and is*

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

> *dismissed. It is reiterated that in accordance with our order dated 13.12.2019, the only scope of the review filed in the Bombay High Court is with respect to GST and not to revisit the issue as to whether gambling is or is not involved."*

3.17 It is significant to note that the most recent order by the Hon'ble Supreme Court has been passed in a Special Leave Petition filed in the case of ***Avinash Mehrotra v. Union of India in [SLP (Civil) Diary No(s). 18478 of 2020]*** on 30.07.2021. One of the questions of law in the said petition was whether the Hon'ble High Court of Punjab and Haryana, Hon'ble High Court of Bombay and Hon'ble High Court of Rajasthan that held fantasy sports to be games of skill not amounting to betting, gambling or wagering erred in properly considering the issue and erred in their judgment.

3.18 In dealing with the same, the Hon'ble Supreme Court of India, in the said case, stated that fantasy sports is a game of skill not amounting to gambling or betting and the issue is no longer *res integra* and, thus, reaffirmed the judgment passed by the Hon'ble High Court of Punjab and Haryana,

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

Hon'ble High Court of Bombay and Hon'ble High Court of Rajasthan and opined as follows:

> *"We have heard Mr. Prashant Kumar, learned counsel for the petitioner who continues to press for adjournment, and points out a judgment dated 06.02.2020 of the State of New York Supreme Court, Appellate Division which is at page 139 of the paper book in which according to him, the fantasy sports spoken of in this matter are pure gambling and not games of skill.*
>
> *This matter is no longer res integra as Special Leave Petitions have come up from the Punjab & Haryana High Court and have been dismissed by this Court as early as on 15.06.2017. Also, from the Bombay High Court, Special Leave Petitions have been dismissed on 04.10.2019 and 13.12.2019*
>
> *However, we must point out that in the Bombay High Court case, the Union and the State of Maharashtra were not heard, as a result of which, by an order dated 06.03.2020, notice was issued and the impugned judgment stayed.*
>
> *Considering that the Union and State matter is completely different and that private petitioners' Special Leave Petitions have been dismissed earlier, this Special Leave Petition is also dismissed."*

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

3.19 At this juncture, it is also relevant to mention that the Hon'ble Supreme Court, in the case of ***Dr. K. R. Lakshmanan v. State of Tamil Nadu***[8], held the rummy game to be game of skill by stating as follows:

> *"'3. xxxx*
> *Gambling in a nutshell is a payment of a price for a chance to win a prize... Games may be of chance, or of skill or of skill and chance combined. A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, the shuffling of the cards, are all modes of chance...A game of skill, on the other hand - although the element of chance necessarily cannot be entirely eliminated - is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the Participant(s). Golf, chess and even Rummy are considered to be games of skill.*
> *xxxx*
>
> *xxxx*
> *xxxx*
>
> ***20.*** *The judgments of this Court in the two Chamarbaugwala cases and in the Satyanarayana case clearly law down that (i) competitions where success depends on substantial degree of skill are not "gambling" and (ii) despite there being an element of chance*

[8] (1996) 2 SCC 226 : AIR 1996 SC 1153

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

> *if a game is preponderantly a game of skill it would nevertheless be a game of "mere skill".*
> *xxxx*
>
> *xxxx*
> *xxxx*
>
> *33. xxxx*
> ***Gaming is the act or practice of gambling on a game of chance.*** *It is staking on chance where chance is the controlling factor.* ***'Gaming' in the two Acts would, therefore, mean wagering or betting on games of chance.*** *It would not include games of skill like horse-racing... We, therefore, hold that wagering or betting on horse racing – a game of skill – does not come within the definition of 'gaming' under the two Acts.'"*
>
> **[Emphasis supplied]**

3.20 It is apposite to note here that in the case of ***State of Andhra Pradesh v. K. Satyanarayana & Ors.***[9], the Hon'ble Supreme Court, relying on the skill test, held that rummy is preponderantly a game of skill and not of chance. The Hon'ble Court held that fall of the cards has to be memorized and the building up of Rummy requires considerable skill in holding and discarding cards to form valid sets and sequences of the 13 cards in hand. It is not merely or only based on the chance that the rummy can be

[9] (1968) 2 SCR 387 : AIR 1968 SC 825

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

won. It involves considerable memory, working out of percentages, the ability to follow the cards on the table and constantly adjust to the changing possibilities of the unseen cards. Thus, it is fairly clear that the game is predominantly dependent on the skill of the participants than the element of chance.

3.21 As per the rules of interpretation of statutes, when words acquire a technical meaning because of their consistent use by the Legislature in a particular sense or because of their authoritative construction by superior Courts, they are understood in that sense when used in a similar context in subsequent legislations.

3.22 Lord Macnaghten stated that in construing Acts of Parliament, it is a general rule that words must be taken in their legal sense unless the contrary intention appears. The words 'charitable institution' were, thus, held to have a technical meaning and it was held that 'Lost Dogs Home' is such an institution.

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

3.23 In the case of ***The State of Madras v. Ganon Dunkerley & Co. (Madras) Ltd.***[10], Justice Venkatarama Ayyer, while explaining the principle of construction, observed as under:

> "*xxxx*
> *The ratio of the rule of interpretation that words of legal import occurring in a statute should be construed in their legal sense is that those words have, in law, acquired a definite and precise sense, and that, accordingly, the legislature must be taken to have intended that they should be understood in that sense. In interpreting an expression used in a legal sense, therefore, we have only to ascertain the precise connotation which it possesses in law.*
> *xxxx*"

3.24 Further, the statutory rules of interpretation also lay emphasis on contextual reading of words and phrases. In the case of ***Hotel and Catering Industry Training Board v. Automobile Proprietary Limited***[11], Lord Denning, speaking for the Court of Appeal, explained the above principle as under:

> *"It is true that "the industry" is defined; but a definition is not to be read in isolation. It must*

[10] 1959 SCR 879 : AIR 1958 SC 560
[11] [1968] 1 WLR 1526 : (1968) 3 All. ER 399 (at p.402 [E])

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

> *be read in the context of the phrase which it defines, realising that the function of a definition is to give precision and certainty to a word or phrase which would otherwise be vague and uncertain — but not to contradict it or supplant it altogether."*

3.25 In ***I.L.M. Cadija Umma and Another v. S. Don Manis Appu***[12], the principle was further enunciated as under:

> *"A phrase having been introduced and then defined, the definition prima facie must entirely determine the application of the phrase; but the definition must itself be interpreted before it is applied, and interpreted, in case of doubt, in a sense appropriate to the phrase defined and to the general purpose of the enactment."*

3.26 Based on the aforesaid case laws, the Courts have taken consistent view on games of skill. It is clear that even with respect to GST law, the interpretation of game of skill not amounting to gambling, betting or wagering is settled, which is a fundamental principle to be applied while determining the valuation of supply under GST law. Thus, as discussed above, betting refers to staking of amount on the happening of an uncertain event and the same involves no skill whatsoever, as the player is not even required to

[12] AIR 1939 PC 68 (at p.65) : 1938 SCC OnLine PC 61

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

make any informed choice while playing or putting his stakes therein. The position of law as laid down by the Courts is clear as crystal that betting and gambling are to be read conjunctively to mean purely *games of chance* and not *games of skill*. In the context of the present issue, games of skill such as fantasy sports games or card games such as rummy cannot be considered to be betting or gambling, as the former require considerable amount of skill and calculated risk and the player makes informed choices while playing and the final outcome is not completely an uncertain event thereby distinguishing it sharply from betting / gambling.

Query B :

Whether payment for game entry amount with clear segregation of Prize Pool and Platform fee for playing online skill-based games is covered within the meaning of "betting" or "gambling" and can, therefore, be considered as supply of goods (actionable claim) attracting GST?

Response to Query B :

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

3.27 In the obtaining context, it is relevant to analyze the provisions of the GST Act and the meaning of betting as provided in Schedule III.

3.28 Section 7(1) of the CGST Act which defines "*supply*" includes all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. However, Section 7(2) read with Entry 6 of Schedule III of the CGST Act provides that actionable claims, other than lottery, betting and gambling shall be treated neither as a supply of goods nor a supply of services.

3.29 Section 2 of the CGST Act defines "***actionable claim***" as having the same meaning as assigned to it in Section 3 of the Transfer of Property Act, 1882. Section 3 of the Transfer of Property Act, 1882 defines '*actionable claim*' as:

> *"claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of*

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

> *the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."*

3.30 The scope of the above definition of "*actionable claim*" was considered by the Hon'ble Supreme Court in ***Sunrise Associates v. Govt. of NCT of Delhi***[18]. The Hon'ble Supreme Court, in the said case, was required to determine as to whether a lottery ticket constitutes an "*actionable claim*" or "*goods*" for the purposes of levy of sales tax. The Hon'ble Court held that the lottery tickets represent a claim to a conditional interest in the prize money which is not in the purchaser's possession and, hence, is an "*actionable claim*".

3.31 It is seemly to note here that value of a taxable supply is required to be determined in accordance with Section 15 of the CGST Act. The relevant portion of the provision is extracted hereunder:

> ***"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*

[18] (2006) 5 SCC 603

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

> *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.....*"

3.32 Further, Section 15(4) of the CGST Act, 2017 provides that the value has to be determined as per rules only if the actual value of the transaction is not determinable. It is required to be read in conjunction with Rule 31A(3) of the CGST Rules, 2017 which provides that the *value of supply of actionable claims 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.*

3.33 Dwelling deeper into the issue, it is necessary to delve into Schedule III of the Central Goods and Services Tax Act, 2017. The terms "*betting*" and "*gambling*" are used together. Thus, the term "*betting*" as used in the Central Goods and Services Tax Act, 2017 must be understood to be betting on games of chance only. The ordinary meaning discussed hereinabove will be applicable for interpretation of the word "*betting*". The word needs to be interpreted applying the principle of *noscitur a sociis* as the interpretive guide. Betting is accompanied by lottery and

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

gambling and, therefore, it has to obtain its meaning from the associated words.

3.34 The principle of *noscitur a sociis* is explained in ***Maxwell on the Interpretation of Statutes***[14] thus:

> *"Where two or more words which are susceptible of analogous meaning are coupled together, noscitur a sociis, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general."*

3.35 In ***Maharashtra University of Health Sciences & Ors. v. Satchkitsa Prasarak Mandal & Ors.***[15], the Hon'ble Supreme Court held thus:

> *"26. The Latin expression "ejusdem generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words. This is a principle which arises "from the linguistic implication by which words having literally a*

[14] 12th Edn. at p.289
[15] (2010) 8 SCC 786

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

> *wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context." It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication (See Glanville Williams, 'The Origins and Logical Implications of the Ejusdem Generis Rule' 7 Conv (NS) 119).*
>
> ***27.** This ejusdem generis principle is a facet of the principle of Noscitur a sociis, The Latin maxim Noscitur a sociis contemplates that a statutory term is recognised by its associated words. The Latin word 'sociis' means 'society'. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context [See similar observations of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover, (1957) AC 436 at 461 of the report]."*

3.36 In ***Pardeep Aggarbatti v. State of Punjab***[16], it has been observed as under:

> *"**9.** Entries in the Schedules of sales tax and excise statutes list some articles separately and some articles are grouped together. When they are grouped together, each word in the entry draws colour from the other words therein. This is the principle of noscitur a sociis."*

[16] (1997) 8 SCC 611

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

3.37 Further, in ***Arcelormittal India Private Limited v. Satish Kumar Gupta and Ors.***[17], the Hon'ble Supreme Court, while delineating on the meaning of the word '*control*' employed in Section 29-A(c) of the IBC, applied the principle of *noscitur a sociis* and opined thus:

> "***53.*** *Section 29-A(c) speaks of a corporate debtor "under the management or control of such person". The expression "under" would seem to suggest positive or proactive control, as opposed to mere negative or reactive control. This becomes even clearer when Sub-clause (g) of Section 29A is read, wherein the expression used is "in the management or control of a corporate debtor". Under Sub-clause (g), only a person who is in proactive or positive control of a corporate debtor can take the proactive decisions mentioned in Sub-clause (g), such as, entering into preferential, undervalued, extortionate credit, or fraudulent transactions.* ***It is thus clear that in the expression "management or control", the two words take colour from each other, in which case the principle of noscitur a sociis must also be held to apply.*** *Thus viewed, what is referred to in Sub-clauses (c) and (g) is de jure or de facto proactive or positive control, and not mere negative control which may flow from an expansive reading of the definition of the word "control" contained in*

[17] (2019) 2 SCC 1

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

Section 2(27) of the Companies Act, 2013, which is inclusive and not exhaustive in nature."

[Emphasis supplied]

3.38 Again, in ***Swiss Ribbons Private Limited & Ors. v. Union of India and Ors.***[18], the Hon'ble Supreme Court, while testing the constitutional validity of the provisions contained in Sections 29A and 240A of the Insolvency and Bankruptcy Code, referred to the definitions of *"related party"* and *"relative"* as defined under Section 5(24) and (24-A) and, applying the principle of *noscitur a sociis*, held as under:

> *"**109.** We are of the view that persons who act jointly or in concert with others are connected with the business activity of the resolution applicant. Similarly, all the categories of persons mentioned in Section 5(24-A) show that such persons must be "connected" with the resolution applicant within the meaning of Section 29-A(j). **This being the case, the said categories of persons who are collectively mentioned under the caption "relative" obviously need to have a connection with the business activity of the resolution applicant. In the absence of showing that such person is "connected" with the***

[18] (2019) 4 SCC 17

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

> ***business of the activity of the resolution applicant, such person cannot possibly be disqualified under Section 29-A(j).*** *All the categories in Section 29-A(j) deal with persons, natural as well as artificial, who are connected with the business activity of the resolution applicant.* ***The expression "related party", therefore, and "relative" contained in the definition sections must be read noscitur a sociis with the categories of persons mentioned in Explanation I, and so read, would include only persons who are connected with the business activity of the resolution applicant.***"
>
> **[Emphasis supplied]**

3.39 Unless the principle of *noscitur sociis* for the purpose of interpretation or construction is applied in the case at hand, one will arrive at an absurd situation. That is wholly unwarranted.

3.40 As is demonstrable, both lottery and gambling are based on chance. The legislative intention was to cover actionable claims in relation to chance. In interpreting the same for the purpose of the said legislation, there appears to be no manifest or patent reason to deviate from the interpretation as discussed above. Thus, the term "*betting*" as used in the Central Goods and Services Tax Act, 2017

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

must be understood to be betting on games of chance only and such interpretation of the term "*betting*" in the Constitution of India is to be applied while interpreting all laws including any taxation statute.

3.41 The foundation of interpretation has to be in consonance with the constitutional framework, for all laws have their source in the Constitution. Any interpretation that is not in accord with the constitutional spirit and understanding is not only impermissible but also results in fundamental transgression of the real source of power, that is, the Constitution of India. When the Hon'ble Supreme Court has understood a term used in the Constitution in a particular manner, no statutory amendment or interpretation can act contrary to it. The base of the judgment of the Apex Court cannot be taken away by any statutory amendment or Notification.

3.42 Once online skill games are neither betting, gambling or lottery as per Schedule III of the CGST Act, as discussed above in detail, any actionable claims relating to games of skill are neither a supply of goods nor a supply of services and, therefore, not subject to levy of GST. Thus, Rule

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

81A(3) of the CGST Rules, 2017, which deals with betting, gambling or horse racing in a race club, is not applicable to online skill games as these cannot be treated as betting, gambling, horseracing or lottery and taxable value that is leviable to GST in the online skill games is identifiable.

3.43 Keeping in mind the revenue-model adopted by games of skill such as fantasy sports and Rummy, it can be opined that the said contribution made by the players towards the prize-pool constitutes an amount towards an actionable claim which does not fall under the category of lottery, betting or gambling activities, for the principal reason that such prize-pool is only held by the gaming platform in fiduciary-capacity in trust. It does not amount to a supply of either goods or services. Therefore, such actionable claim is covered by Entry No. 6 of Schedule III of the CGST Act and, hence, not leviable to GST. The platforms are not liable to collect and discharge GST on the portion of the players' contribution which constitutes the part of the prize pool which is an actionable claim.

3.44 However, it is opined that the specific amount collected as *'platform fees'* by the platform is certainly a "*consideration*"

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

for such supply of services and, therefore, the same is taxable under GST.

Query C :

Whether the Supreme Court judgment of *Skill Lotto Solutions v. Union of India* is applicable and relevant for the online skill-based games?

Response to Query C :

3.45 The judgment rendered by the Hon'ble Supreme Court in ***Skill Lotto Solutions v. Union of India***[19] has been examined in detail by me and at the foremost, it is clarified that this case involved the issue primarily related to lottery and lottery tickets, and not any online games or fantasy sports.

3.46 In the case of ***M/s Skill Lotto*** (supra), the Hon'ble Supreme Court was dealing with the issue of whether GST can be applied on the face value of "*lottery tickets*". On this, the Hon'ble Supreme Court first held that the Parliament

[19] 2020 SCC OnLine SC 990 : AIR 2021 SC 366

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

has been conferred powers to make laws with respect to goods and services and such legislative power is plenary. Therefore, it was held that actionable claims could be included in the definition of goods at the will of the Parliament without there being any dispute on this issue.

3.47 The other issue before the Hon'ble Supreme Court was whether prize payouts should be excluded from the face value of the lottery ticket. It is noticed that the earlier issued Circulars under the erstwhile Service Tax regime allowed for such abatement. However, with the advent and introduction of the new regime of taxation under GST, such abatement was not extended to the new regime. The Hon'ble Supreme Court noted that having sold the lottery ticket as an actionable claim in full, tax is leviable on the full face value if the valuation provision did not provide for any abatement. Accordingly, the Hon'ble Supreme Court upheld the imposition of GST on the full face value of such lottery tickets.

3.48 It is pertinent to observe that the situation of lottery is unique and distinguishable as there is only a single supply by the operator to the entrant and no *inter se* competition

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

or transaction between the entrants. As explained, the winners are determined by their own luck or chance alone and not by any skill or judgment.

3.49 On the other hand, online gaming involves two distinct transactions. A supply of platform services by the online gaming companies to the players and *inter se* transactions between the players playing against each other involve skill and judgment. The contract of games is between the players and the platform merely holds their money for easy accountability and settlement. But winning and losses are the result of the contract of games between the players only who compete on the basis of their skills, experience, statistical understanding, etc. The deposits of the users/players, while actionable claims managed by the platform, do not form part of the supply by the platform and, hence, cannot form part of the value of the supply made by the online gaming companies. It is settled law by the Hon'ble Supreme Court that the form of the transaction cannot be ignored except if it has no correlation with the actual transaction in contemplation and held that where there is no correlation between the taxable event and the levy, it would be *ultra vires* the Constitution.

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

4. **Conclusions :**

In view of the foregoing analysis and reasoning, the Queries posed by the Querist are answered thus :

Query A

4.1 What is the meaning of 'betting' in the context of GST provisions provided in paragraph no. 6 of Schedule III of the Central Goods & Services Tax Act, 2017? Will it include 'games of skill'?

Conclusion in respect of Query A

As discussed above, "*betting or gambling*" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring.

Query B

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

4.2 Whether payment for game entry amount with clear segregation of Prize Pool and Platform fee for playing online skill-based games is covered within the meaning of "betting" or "gambling" and can, therefore, be considered as supply of goods (actionable claim) attracting GST?

Conclusion in respect of Query B

It is opined that the contribution made by the players towards the prize-pool constitutes an amount towards an *actionable claim* which does not fall under the category of lottery, betting or gambling activities, for the main reason that such prize-pool is only held by the online skill gaming platform in fiduciary-capacity in trust, thereby the same not being a supply of either goods or services. Therefore, it is opined that such actionable claim is covered by Entry No. 6 of Schedule III of the CGST Act and, hence, not leviable to GST. However, it is opined that the specific amount collected as '*platform fees*' by the platform is certainly a "*consideration*" for such supply of services and, therefore, the same is taxable under GST.

Query C

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

4.3 Whether the Supreme Court judgment of *Skill Lotto Solutions v. Union of India* is applicable and relevant for the online skill-based games?

Conclusion in respect of Query C

There is a clear-cut distinction between lottery and online skill gaming wherein the former is purely a *game of chance*, as clarified in *Skill Lotto*. It is opined that lottery cannot be equated with online skill gaming as the latter involves substantial skill, if not expertise, and the outcome is not left to chance or happening of an uncertain event.

5. Assumptions and Qualifications :

5.1 The analysis in this Opinion is as of the date mentioned herein and based on the laws in India existing as on date and is limited to the issue specifically discussed in the Opinion.

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Dipak Misra
Former Chief Justice of India

5.2 This Opinion is strictly limited to the matter expressly addressed herein and is not to be read as opinion in relation to any other factual or legal matter.

5.3 This Legal Opinion is based on the facts as presented to me.

5.4 This Opinion is not meant to be used in any Court of law or before any statutory Tribunal.

Dated : 17.08.2022

Justice Dipak Misra
Former Chief Justice of India

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tel.: +91 11 26935111 Mobile : +91 9560333111
E-mail: justicedmisra@gmail.com, justicedmisra.infodesk@gmail.com

Justice Anil Kumar
Judge (Retd.)
Allahabad High Court

Lucknow.
Date : 14/8/2022

LEGAL OPINION

1. I have been approached by the All India Gaming Federation [hereinafter "the Querist"], the apex industry body for online gaming in India, for a legal opinion on the issue of valuation of supplies rendered by online gaming platforms for the purposes of imposition of Goods and Services Tax [hereinafter "GST"].
2. Before delving into the legal aspects with respect to the above issue, it is relevant to state certain facts which have been brought to my notice by the Querist on the basis of the material which is available with them. In brief, the facts are as follows:

BRIEF FACTS

3. The Querist, on the basis of the available material, has apprised me that India provides one of the biggest markets for online gaming in the world. The availability of affordable internet for the masses, as well as mobiles and other electronic devices to access the same, has resulted in broadening the customer base of the online gaming industry in the recent past. The COVID-19 pandemic induced lockdown, although disastrous for almost all major industries, led to a massive jump in the number of people downloading and playing online games on their mobiles and tablets.
4. The online gaming industry in India was assessed to be worth more than Rs. 13,500 crores in the previous financial year, and the same is expected to increase exponentially in the coming decade. As such, there are major implications of any change in tax structures applicable to the online gaming industry.
5. The Querist has put forth a simple model on which online gaming companies and platforms operate. As per the model explained by the Querist, the online gaming companies provide a platform in the form of a website or a mobile application which can be used by a gamer to participate and compete against multiple other gamers in games of skill. The gamer is required to deposit a certain amount to enter and participate in these games. The said *Contest Entry Fee* is divided into two parts – (A)

Off./Resi. Address : 81, Chandralok Colony, Aliganj, Lucknow-226024
E-mail : jak.hc.lko@gmail.com, Mob. No.: 9839013512

Justice Anil Kumar
Judge (Retd.)
Allahabad High Court

Lucknow.
Date : 14/8/2022

Platform Fee which forms the consideration for accessing and using the platform created by the online gaming company to participate in the online games and to compete against multiple other gamers playing the same game, and (B) *Prize Pool Contribution* which is the money which is put at stake by each gamer, and which forms part of the total prize pool for eventual disbursement to the winners of the contest.

6. It has been brought to my notice by the Querist that at the conclusion of the contest, the online gaming company only holds on to the *Platform Fee* as the consideration for providing a platform to the gamers for engaging in games of skill. The *Platform Fee* generally varies between 5% - 15% of the total *Contest Entry Fee*, depending upon the kind of game, platform, total stakes and the number of players involved. The major part of the upfront fee paid by the gamer, in the form of the *Prize Pool Contribution*, is distributed among the winner or winners of the contest. The online gaming company merely holds on to the *Prize Pool Contribution* for the duration of the game, in a totally fiduciary capacity, for ultimate distribution among the winners, and receives no part of the *Prize Pool Contribution* at the time of conclusion of the game.

7. A possible scenario, as explained by the Querist, is as follows:

> Two players engage in a game of online chess on a mobile application created by an online gaming company. Each one of the chess players deposits a *Contest Entry Fee* of Rs. 100. Out of this amount of Rs. 100, only 10% i.e. Rs. 10 is chargeable as the *Platform Fee*, and the remaining amount of Rs. 90 is held in the form of *Prize Pool Contribution*. A total Prize Pool of Rs. 180 is created for the contest. At the end of the game, only Rs. 20 is retained by the online gaming company as the *Platform Fee*, and the remaining amount of Rs. 180 is transferred to the winner of the chess game. Thus, the fees chargeable for the supplies or services provided by the online gaming company is only Rs. 20, and not Rs. 200.

Off./Resi. Address : 81, Chandralok Colony, Aliganj, Lucknow-226024
E-mail : jak.hc.lko@gmail.com, Mob. No.: 9839013512

Justice Anil Kumar
Judge (Retd.)
Allahabad High Court

Lucknow.
Date : ....14/8/2022.....

8. At present, GST at the rate of 18% is levied on only the *Platform Fee*, for the supply of services in the shape of facilitating online gaming by providing a web based platform for the same. However, with respect to online gaming, the Goods and Services Tax Council has recently referred the issue of valuation of supplies and determination of the amount on which GST would be levied to the Group of Ministers [hereinafter "GoM"]. According to media reports, there is a recommendation for the imposition of GST on the consolidated amount deposited by a gamer, including the *Platform Fee* as well as the *Prize Pool Contribution*, instead of merely restricting the imposition of tax to the *Platform Fee*, as is the case today.
9. In view of the above factual background, the Querist has sought a legal opinion on the following points
   A. Whether GST can be imposed on the consolidated amount of *(Platform Fee + Prize Pool Contribution)*?
   B. Whether any changes to the existing tax regime in order to impose GST on the consolidated amount of *(Platform Fee + Prize Pool Contribution)* would be violative of Article 14 of the Constitution of India?
10. In order to give the legal opinion on the points in issue, I feel appropriate to go through the relevant provisions of the Central Goods and Services Tax Act 2017 [hereinafter "CGST Act"] and the Transfer of Property Act 1882: which read as under:

Section 2 of the CGST Act defines 'actionable claim' as under:

> *2. Definitions. – In this Act, unless the context otherwise requires, –*
> *(1) "actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882);*

Off./Resi. Address : 81, Chandralok Colony, Aliganj, Lucknow-226024
E-mail : jak.hc.lko@gmail.com, Mob. No.: 9839013512

Justice Anil Kumar
Judge (Retd.)
Allahabad High Court

Lucknow.
Date : ....14/8/2022.....

Section 3, the Interpretation Clause of the Transfer of Property Act 1882, defines 'actionable claim' as follows:

> *"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;*

The CGST Act explains the term 'supply' in Section 7. The relevant portion of Section 7 is reproduced below:

> *7. Scope of supply. – (1) For the purposes of this Act, the expression "supply" includes –*
>
> *(2) Notwithstanding anything contained in sub-section (1), -*
>
> *(a) activities or transactions specified in Schedule III; or*
>
> *(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,*
>
> *shall be treated neither as a supply of goods nor a supply of services."*

Schedule III, which finds mention in Section 7(2)(a) of the CGST Act, and Entry 6 therein, reads as follows:

SCHEDULE III

[See Section 7]

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.

Off./Resi. Address : 81, Chandralok Colony, Aliganj, Lucknow-226024
E-mail : jak.hc.lko@gmail.com, Mob. No.: 9839013512

Justice Anil Kumar
Judge (Retd.)
Allahabad High Court

Lucknow.
Date : 14/8/2022

OPINION ON QUERY A

11. On a combined reading of the above sections, the legal position which emerges is that 'actionable claims', other than lottery, betting and gambling have been expressly exempted from the purview of GST imposition as is evident from a mere reading of Section 7(2) and Entry 6 of Schedule III of the CGST Act.

12. The Bombay High Court in the case of *Gurdeep Singh Sachar v. Union of India*, 2019 SCC OnLine Bom 13059, after taking into consideration the above quoted provisions, held that prize pool contribution falls under the category of 'actionable claims'. The relevant portion of the said judgment has been quoted below:

> *14. Thus, the activities mentioned in Schedule III under the CGST Act are not taxable as the same are neither 'supply' of goods nor 'supply' of services. The entry in schedule III relevant for the instant case is Entry 6 which includes actionable claims, other than lottery, betting and gambling.*
>
> *15. In the instant case, admittedly, there is no dispute that the amounts pooled in the escrow account is an 'actionable claim', as the same is to be distributed amongst the winning participating members as per the outcome of a game. But, as held hereinabove since the activities of the respondent No. 3 do not amount to lottery, betting and gambling, the said actionable claim would fall under Entry 6 of the Schedule III under Section 7(2) of CGST Act. 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.*

13. Accordingly, the legal position which emerges is to the effect that the *Prize Pool Contribution* component does not qualify as either a supply of goods or as a supply of services. Consequently, any imposition of GST on the *Prize Pool Contribution* would be contrary to the exemption granted to all actionable claims, other than lottery, betting and gambling.

Off./Resi. Address : 81, Chandralok Colony, Aliganj, Lucknow-226024
E-mail : jak.hc.lko@gmail.com, Mob. No.: 9839013512

Justice Anil Kumar
Judge (Retd.)
Allahabad High Court

Lucknow.
Date : 14/8/2022

14. Thus, in view of the above facts and legal position, I am of the opinion that GST cannot be imposed on the *Prize Pool Contribution* component as this part of the *Contest Entry Fee* stands exempted from the tax net under Entry 6 of Schedule III of the CGST Act.

OPINION ON QUERY B

15. On the basis of the discussion with the Querist, and after going through the material which is available with him, it is clear that the gaming platforms provide a website or a mobile application which can be used by a gamer to compete against other gamers. In order to participate and succeed in these games, the skill of the player is involved.

16. In the field of legal jurisprudence, online games have been held to be games of skill. In this regard, various High Courts across the country have held that online gaming are games of skill, and are clearly distinguishable from lottery, betting and gambling.

17. Division Benches of the Karnataka High Court in *All India Gaming Federation v. State of Karnataka*, 2022 SCC OnLine Kar 435, the Madras High Court in *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu*, 2021 SCC OnLine Mad 2762 and the Rajasthan High Court in *Ravindra Singh Chaudhary v. Union of India and others*, 2020 SCC OnLine Raj 2688 have held that such online games are predominantly based upon skill, and not on mere chance. Multiple other High Courts have adopted the same stance as far as online games are concerned.

18. Further, a Constitution Bench of the Supreme Court of India, in *R.M.D. Chamarbaugwalla and Anr. v. Union of India*, AIR 1957 SC 628 [hereinafter "*R.M.D. Chamarbaugwalla*"] has appreciated the difference between games which depend on the skill of the player, and those which do not. The Supreme Court recognized the two as falling under two distinct and separate categories, in the following words:

Off./Resi. Address : 81, Chandralok Colony, Aliganj, Lucknow-226024
E-mail : jak.hc.lko@gmail.com, Mob. No.: 9839013512

Justice Anil Kumar
Judge (Retd.)
Allahabad High Court

Lucknow.
Date : .....14/8/2022.....

> 23. *Applying these principles to the present Act, it will not be questioned that competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories. The difference between the two classes of competitions is as clear-cut as that between commercial and wagering contracts.*

19. The distinction between games of mere chance and those involving the use of skill has been also affirmed by the Supreme Court in *State of Andhra Pradesh v. K. Satyanarayana and others,* AIR 1968 SC 825.

20. In *K.R. Lakshmanan (Dr.) v. State of Tamil Nadu,* (1996) 2 SCC 226, the Supreme Court relied upon the above quoted paragraph from *R.M.D. Chamarbaugwalla,* and held that competitions in which success predominantly depends on skill are distinct from activities such as lottery, betting and gambling which are wholly dependent on chance. The Supreme Court categorically held the two types of competitions to be falling in two separate and distinct classes. It was also held that games dependent on skill are legitimate business activities and enjoy the protection guaranteed by Article 19(1)(g) of the Constitution of India. The relevant paragraph is extracted below:

> 9. *...This Court, therefore, in the two Chamarbaugwala-cases, has held that gambling is not trade and as such is not protected by Article 19(1)(g) of the Constitution. It has further been authoritatively held that the competitions which involve substantial skill are not gambling activities. Such competitions are business activities, the protection of which is guaranteed by Article 19(1)(g) of the Constitution.*

21. The distinct nature of activities such as lottery, betting and gambling has also been recognized by a three judge Bench of the Supreme Court of India in *Skill Lotto Solutions Pvt. Ltd. v. Union of India and others,* 2020 SCC OnLine SC 990 [hereinafter

Off./Resi. Address : 81, Chandralok Colony, Aliganj, Lucknow-226024
E-mail : jak.hc.lko@gmail.com, Mob. No.: 9839013512

Justice Anil Kumar
Judge (Retd.)
Allahabad High Court

Lucknow.
Date : 14/8/2022

"*Skill Lotto*"]. In the facts of the *Skill Lotto* judgment, a challenge to the levy of GST on lottery, betting and gambling was raised on the grounds of it being discriminatory and in violation of Article 14 of the Constitution of India. Since the *Skill Lotto* judgment was concerned with a challenge to the taxes levied on lottery, betting and gambling, and not with online games, the *ratio* of the said judgment cannot be considered to be applicable to the issue of levy of GST on online games.

22. Furthermore, it is also relevant to note that in the *Skill Lotto* judgment, the Supreme Court relied upon an earlier Constitution Bench judgment of the Supreme Court itself in *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699, and held that there was a proper rationale or reason for treating lottery, betting and gambling as taxable activities under the CGST Act, while exempting other actionable claims from the levy of GST under Schedule III, as the two kinds of activities are clearly distinct. The *Skill Lotto* judgment concluded as follows:

> *71. ...The Constitution Bench in State of Bombay v. R.M.D. Chamarbaugwala (supra) has clearly stated that Constitution makers who set up an ideal welfare State have never intended to elevate betting and gambling on the level of country's trade or business or commerce. In this country, the aforesaid were never accorded recognition of trade, business or commerce and were always regulated and taxing the lottery, gambling and betting was with the objective as noted by the Constitution Bench in the case of State of Bombay v. R.M.D. Chamarbaugwala (supra), we, thus, do not accept the submission of the petitioner that there is any hostile discrimination in taxing the lottery, betting and gambling and not taxing other actionable claims. The rationale to tax the aforesaid is easily comprehensible as noted above.*

23. As per the above judicial pronouncements, I am of the opinion that online games are predominantly based upon skill and talent, and the same cannot be put on the same pedestal as activities such as lottery, betting and gambling. While lottery,

Off./Resi. Address : 81, Chandralok Colony, Aliganj, Lucknow-226024
E-mail : jak.hc.lko@gmail.com, Mob. No.: 9839013512

Justice Anil Kumar
Judge (Retd.)
Allahabad High Court

Lucknow.
Date : 14/8/2022.

betting and gambling have been held to be *res extra commercium*, online gaming is recognized as legitimate trade, business or commerce, and attracts the protection guaranteed under Article 19(1)(g) of the Constitution of India. Any attempt to put these distinct categories into the same tax regime would be arbitrary and discriminatory in nature, as it would amount to meting out equal treatment to those who are unequal. It would also amount to treating equals in an unequal manner as far as the relation between online games and other legitimate entertainment industries are concerned.

24. Therefore, in my opinion, the imposition of GST on the *Prize Pool Contribution* would be against the provisions of the CGST Act. Only the tax imposed on the *Platform Fee* retained by the online gaming companies can be subject to tax. Furthermore, any tax regime which puts games of skill such as online games in the same basket as lottery, betting and gambling, and attempts to tax these activities in the same manner would be unconstitutional in nature.

Justice Anil Kumar
Judge (Retd.)
Allahabad High Court

Off./Resi. Address : 81, Chandralok Colony, Aliganj, Lucknow-226024
E-mail : jak.hc.lko@gmail.com, Mob. No.: 9839013512

OPINION

Querist – All India Gaming Federation

1. All India Gaming Federation ("**AIGF**"), the Querist is the apex industry body for self-regulation of Online Skill Games in India and its membership includes over 60 online skill gaming companies covering a wide spectrum of online games.

2. Online gaming companies are technology companies whose core business is to design and maintain online platforms on which they host games, skill based or otherwise. The online gaming company puts in place the infrastructure for creating a platform for gaming. It however does not participate in any game in the sense that no player on the platform is pitched against the "house". The companies only provide the platform on which those who seek to participate can play against each other. The company also acts as the clearing house, securing winnings by taking deposits and making payments, thereby bringing about a settlement at the end of the game.

3. The revenue streams of these companies are consistent with this business model of being a passive technology. A participant in such a game [a " gamer"] makes payments under two broad heads to participate in games on the website/app of the gaming company:

    a. Platform Fee: paid as consideration for access to website/app of the gaming company and utilizing the electronic wallet service and for facilitating gameplay on the platform
    b. Contest Entry buy-in: amounts deposited by the player as a contribution to the prize pool from where prize moneys are disbursed to the winners upon conclusion of the games.

4. The Platform Fee is paid to the online gaming company as consideration for the access to the technology/ infrastructure so as to participate in gaming activity, and providing such access falls within the definition of "services" under Section 2(102) of the Central Goods and Services Act, 2017 ("**CGST Act**") and thereby attracts GST @18% under Classification

998439 ("Other on-line contents n.e.c.", which "*includes games that are intended to be played on the Internet*").

5. If a gaming company charges [for example] an amount of Rs. 100 for providing access to the skill-based games on its website/application, GST @18% would be leviable on this amount of Rs. 100. The amount deposited by a person as a buy-in to play a game on the online platform is kept in an account for settling the winnings based on the outcome of the game and no GST is levied on these deposits.

6. The amounts received by the online gaming company as Contest-entry *buy-ins*, on the other hand, are entirely distinct from the amounts received by the online gaming company for providing the technology/infrastructure for hosting the online games. These amounts are deposited by the gamers with the online gaming company so as to generate a "pool" of winnings that will be disbursed to the winner/winners based on the outcome of the competition between the gamers involved. In a manner that replicates gaming in the real world [as against the virtual world] the agency that organizes the gaming collects a deposit from those who are participating in the game. In some of the games the total amount collected from a group of players becomes the "pool" and the winner scoops the pool. Alternately there may be different degrees of success but the amount lost by those who are unsuccessful will always equal what is won by the winners. The person who conducts the games also "settles" the accounts between the participants.

7. It is obvious that as in the conduct of a game in real life, the amounts received from the participants is not the income of the organizer of the game. The operator separately collects a Platform fee that covers his expenses and profit, and that is the measure of the service rendered by him. There is no nexus between the deposits constituting the "pool" and the provision of the online technology/ infrastructure by the online gaming company. The contest entry buy-in amounts are held in a fiduciary capacity by the gaming company (in escrow/deemed escrow) pending the outcome of the gaming activity and are simply distributed by the gaming company with reference to the outcome of the game. The online gaming company have no beneficial interest in the Contest Entry buy-in deposits.

8. There may be a few participants [and lesser access fee] but a much bigger pool depending on the appetite of the participants, while on other occasions there may be a large number of participants with a smaller pool. In the former case, the value of the service rendered is much lesser [organizing gaming between a few people] than in the latter case where the value of the service is higher due to a greater number of participants. This shows the complete absence of nexus between the buy in money received and the value of the service rendered by the online organizer.

9. As a practice, the platform fee is deducted from the buy in money and the rest is distributed as winnings. If the gaming company is hosting a game with a buy-in amount of Rs. 1000, and 10 gamers participate in the game, each paying a convenience fee of Rs. 100 to the online gaming platform, the total value of the "pool" of winnings can be computed as follows:

    a. Total amount deposited with gaming company as contest buy-in = Rs. 1000*10 = Rs. 10,000
    b. Total amount collected by the gaming company as Platform Fee = Rs. 100*10 = Rs. 1000
    c. Total value of "pool" of winnings = Rs. 10,000 minus Rs. 1000 = Rs. 9,000

10. The gaming company has no rights over the amount of Rs. 9,000 which remains deposited with such gaming company, in most cases, in a separate escrow account This amount must be paid to the winner(s) of the game based on the outcome of the contest carried out *inter se* the 10 participants. The gaming company itself is not a participant in the game and stands no chance of "winning" the amount of Rs. 9000 or any part thereof, nor does it carry the risk of losing for the reason that it would recover the Platform fee from the participants. This amount would necessarily be disbursed by the gaming company to one or more of the 10 participants, depending on the rules and outcome of the game. It is open to the winner(s) of the game to do as they wish with this amount; it can either be immediately withdrawn from the electronic wallet into which it is released by the gaming company. Alternatively, the amount may be retained in the wallet to be used for future gaming activity. In either event, these funds remain with and exclusively accessible to the

participant. The consideration received by the gaming company, in the example above, is never anything more than the Rs. 100 collected by it as Platform Fee, which amount is subject to GST @18%.

11. I am instructed that the financial as well as taxation model described above conforms to the global approach to valuation of online skill-based gaming. There are two approaches to compute the value of the services provided in such an activity. One way is where the organizer of the game collects a fixed fee from the participant, in which the participation fee [under whatever nomenclature] is the consideration for the service rendered, and thus the basis for its valuation and taxation. The second method, where there is no participation fee charged but a moiety of the collections is retained by the organizer by way of charges for running the game [Gross Gaming Revenue Method), the amount retained becomes the measure of the value of the service rendered.

12. In the example above, either of these approaches would produce a transaction value/GGR of Rs. 100, which amount is taxable in the hands of the gaming company.

13. The Querist has been informed that that the Goods and Services Tax Council (**"GST Council"**) has referred to a Group of Ministers (**"GOM"**) the issue of whether any change is required in the legal provision to better measure the value of supplies made *inter alia* by online gaming platforms for the purpose of levy of GST. The Terms of Reference of the GOM are stated to include confirming the rate of supplies made by online gaming platforms as well as examination of the *valuation* of such supplies for the purpose of levy of GST. It is understood that after the GOM submitted its report, the GST Council at its 47th Meeting held on 28th and 29th June, 2022 directed the GOM to re-examine the issues based on further inputs from the states. Media agencies have reported that the GOM Report recommended that GST should be levied not only on the Platform Fee but also on the Contest-entry Buy-in deposits, i.e., on the full value of the "pool" of winnings across the gaming activity on the online platform. This proposal is stated to be under active consideration and is likely to be taken up again at the next meeting of the GST Council.

14. The Querist has sought my advice on the legal validity of the proposal to levy GST on the entire Contest buy-in amounts deposited by gamers with the gaming companies, by altering the present regime in which GST is levied only on the transaction value/GGR received by the gaming company for provision of the service of granting access to technology/infrastructure for online gamine and facilitating gameplay.

15. To examine the constitutionality of such a measure, were one to be put in place, it is first necessary to outline the existing provisions of the CGST Act.

16. At the outset, certain provisions of the CGST Act may be noted:

a. Section 9 of the CGST Act is the charging provision and stipulates that *"there shall be levied a tax called the Central Goods and Services tax..."*. Unless specifically exempted, supply of all goods and services within India is subject to GST at specified rates.
b. *"supply"* is defined in Section 7(1)(a) and covers *"any form of supply of goods or services or both for a consideration by a person in the course or furtherance of business"*.
c. *"goods"* is defined in Section 2(52) as meaning *"every kind of movable property"*, and in relevant part, includes an *"actionable claim"*.
d. *"actionable claim"* is defined in Section 2(1) (which in turn refers to Section 3 of the Transfer of Property Act, 1882) as meaning a claim to any unsecured debt or any beneficial interest in a movable property not in possession, which debt may be existent, accruing, conditional, or contingent.
e. "services" is defined in Section 2(102) as meaning *"anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged"*

17. The Platform Fee charged by the gaming company is a fee for the "supply" of "services" within the meaning of the CGST Act and is the obvious measure on which an *ad valorem*

service tax can be imposed. . The issue is can the value of the "supply" – i.e. the services rendered by a gaming company be reckoned with reference not the fee actually being received by the gaming company for provision of the service of the technology platform and for facilitating gaming (Platform Fee) but also with reference to the amounts deposited with the gaming company as Contest Entry buy-in.

18. Section 15(1) of the CGST Act provides in relevant part that 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..."* (emphasis supplied).

19. The legislature has a wide discretion in choosing the stage of levy and the measure. The Supreme Court, in *Union of India vs. Bombay Tyre International Ltd* (1984) 1 SCC 467) cited Sir Maurice Gwyer's observations in *In re Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act* as follows : *"Subject always to the legislative competence of the taxing authority, a duty on home-produced goods will obviously be imposed at the stage which the authority finds to be the most convenient and the most lucrative, wherever it may be; but that is a matter of the machinery of collection, and does not affect the essential nature of the tax"*.

20. After analyzing the cases that recognized the distinction between the subject of a tax and the measure, the Supreme Court held *"...It is apparent, therefore, that when enacting a measure to serve as a standard for assessing the levy the Legislature need not contour it along lines which spell out the character of the levy itself. ..... We are of opinion that a broader based standard of reference may be adopted for the purpose of determining the measure of the levy. Any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy. In our opinion, the original Section 4 and the new Section 4 of the Central Excises and Salt Act satisfy this test"*.

21. In *State of Rajasthan v. Rajasthan Chemists Association* (2006) 6 SCC 773),upholding the judgment of the High Court striking down the law that sought to impose sales tax at the wholesale stage on the MRP of the drugs under sale, the Supreme Court held:

"50.... Applying the principles enunciated above, the inevitable conclusion is that when the wholesaler sells any formulation to a retailer in bulk quantity, taxable event of sale of goods takes place where the wholesaler and retailers are the parties to the contract, the goods in question are the formulations and the consideration is one which is agreed to between the parties to that transaction within the limits permissible by law. By substituting the assumed quantity of goods or a price which is not the subject-matter of that contract of completed sale for the purpose of measuring tax, the legislature assumes existence of contract of sale of drugs by legal fiction which has not taken place, and which cannot be considered to be a sale in the manner stated in the Sales Act, which alone can be the subject of tax under Entry 54 in List II. Substitution of assumed price or the assumed quantity in place of actual price/quantity in a completed sale transaction, for the purpose of levy of tax on the subject-matter of tax results in taking away from it the character of "sale of goods" as envisaged under the Sales Act.

.....

53. By devising a methodology in the matter of levy of tax on sale of goods, law prohibits taxing of a transaction which is not a completed sale and also confines sale of goods to mean sale as defined under the Act. This cannot be overridden by devising a measure of tax which relates to an event which has not come into existence when tax is ex hypothesi determined, much less which can be said to be a completed sale and which cannot be the subject of legislation providing tax on "sale of goods" by transplanting a sum related to as "likely price" to be charged for subsequent sale to be taxed by the devise of measuring tax for the completed transaction which has become subject of tax.

....

***55.** If the legislation can provide for a measure of tax on the subject of tax by substituting any notional value, which at no point of time becomes part of or related to subject of tax viz. sale of goods, then the fact that it is related to MRP loses its significance altogether. If this is permitted to be done, the legislation can provide for any measure the purpose of applying the rate of tax, whether it is founded on MRP or any other fixed value which the legislature may provide will make little difference. It is not contended by the appellant that even if the measure is not relatable to MRP, it can substitute any value as a measure of tax. Subject of tax is not the goods or goods sold, but a transaction of "sale of goods" as defined under the Sales Act."*

22. In my opinion, , the transaction value of the supply by the gaming company must have nexus with service provided. Any basis on which the legislature decides to impose the tax must have nexus with this subject of the tax. A taxi driver who ferries a rich businessman on a meeting cannot be taxed on the basis of the wealth of his passenger or the importance of the journey. A landlord cannot be taxed [in the context of a service tax on letting] on the value of business done in the office. If the provider of the platform or infrastructure is taxed on the value of the winnings or the amount which the participants bring to the game, it will be as irrational and lacking in nexus with the subject of the tax.

23. it bears repetition that these deposits are *not* consideration for the supply of the technology/ infrastructure. There is no nexus between the supply of the technology/ infrastructure by the gaming company and the deposits placed with it for contest entry-buy-in. Valuing the service provided by gaming companies with reference to the amount of the Contest Entry buy-in deposits is therefore inconsistent with and contrary to Section 15 of the CGST Act. It follows that any amendment of the CGST Rules to insert a provision that would value the supply in case of online gaming as including the full amount of the Contest Entry buy-in deposits (and not only such portion of the deposits as are collected by the gaming company as Platform Fee) would be ultra vires the legislative competence of Parliament under Art. 246A of the Act.

24. Entry 6 of Schedule III reads *"actionable claims other than betting, gambling and horse racing"*. The CGST is a tax on supply of goods and services relatable to Art. 246A of the Constitution. It is not a tax on betting and gambling. A tax on betting and gambling would fall upon the person betting or gambling, even if it was collected from the organiser of such betting or gambling. The CGST is a tax on the service provided by one who organises gaming. It applies to both situations, viz games of skill and games of chance. The imposition of the tax being on the supply of a service, the measure of tax must have nexus with the rendition of service.

25. The judgement of the Supreme Court in *Skill Lotto Solutions Ltd. v. Union of India* 2020 SCC OnLine 990 is of no assistance to the proposal to levy GST on the entire Contest buy-

in amounts deposited by gamers with the gaming companies. *Skill Lotto* dealt with the challenge to the definition of *goods* under Section 2 (52) of the Central Goods And Services Act 2017. By this definition, the expression "*goods*" was expanded to include actionable claims. The obvious purpose of this amendment was to bring to tax lotteries . Prior to the insertion of Art. 246A, the imposition of sales tax on lotteries was beyond the legislative competence of the States as "goods" in the legislative entries was to be understood in harmony with the definition under Sale of Goods Act, which definition in turn expressly excluded actionable claims.

26. The contentions of the Petitioners are noted in paragraph 4 – i.e., that a lottery is not "goods" and thus the imposition of GST on lotteries is *ultra vires* the Constitution. It was also submitted that the observations of the Supreme Court in *Sunrise Associates v. Govt of NCT of Delhi* (2006) 5 SCC 603 holding that lotteries were not taxable as goods concluded this issue, but the judgement, to the extent it held that a lottery was an *actionable claim* was not binding as those findings were an *obiter*.

27. The questions of law framed, in Paragraph 12, included a question whether prize money is to be excluded from the face value of the lottery tickets for determining the value for levy of GST.

28. In Paragraph 37, the judgement holds that Parliament's powers under Article 246A are plenary and there was nothing which prevented Parliament from defining *goods* to include actionable claims. The principle set out in *State of Madras v. Gannon Dunkerley & Co., (Madras) Ltd.* 1959 SCR 329 interpreting the original legislative entries cannot apply to Article 246A. It then held that the question as to whether lottery is goods or an actionable claim had clearly arisen in *Sunrise Associates (supra)* and the observations in this judgment could not be treated as an obiter. The issue as to legislative competence was decisively answered in paragraph 58 as follows:

> *"58. We have already noted that under Article 246A notwithstanding anything contained in Articles 246 and 254, Parliament has power to make laws with respect to goods and services tax. Article 246A is a special provision with regard to goods and*

services tax w.e.f. 16.09.2016, which special power has to be liberally construed empowering the Parliament to make laws with respect to goods and services tax. The submission of learned counsel for the petitioner is that actionable claim has been artificially and with a view to assume the power to tax has been included in Section 2 (52). The Constitution Bench of this Court in Sunrise Associates (supra) has held that actionable claims are includible in the definition of goods and had actionable claims were not includible there was no need for excluding them. The Constitution Bench held "were actionable claims, etc., not otherwise includible in the definition of "goods", there was no need for excluding them. In other words, actionable claims are "goods" but not for the purpose of Sales Tax Acts and but for this statutory exclusion, an actionable claim would be "goods" or the subject-matter of ownership".

29. On the question of valuation, the Supreme Court held in Paragraph 78 that once there is a statutory provision enumerating what should be included in the value of the supply and what is not to be included, there was no scope for granting an abatement of something which is not so allowed to be abated in the statute. It is obvious that when lotteries are being taxed as "goods" then a tax on the sale price of such goods cannot be challenged as being beyond legislative competence. Once that is so, whether it should be on the gross or the net is a matter for Parliament. A similar situation, in relation to online gaming, would be whether the valuation should be on the basis of the gross Platform fee collected, or after allowing abatement for expenses.

30. Online gaming is not taxed as supply of goods but is the supply of a service. The "actionable claim" in the context of a lottery is the right to participate in the chance of winning the lottery, which is a contract between the person who conducts the lottery and the buyer of the lottery ticket. The creation of such an actionable claim has been equated with the supply of goods, and this has come about by virtue of Article 246A of the Constitution not being hedged in by the same limitations as were applicable to the legislative entry under which sales tax was imposed.

31. The face value of a lottery ticket is like the sale price of goods – the contention that what should be taxed as only the net take of the "*seller*" cannot be read in as a limitation on

the legislative power of Parliament. It cannot be gainsaid that the sale price of goods supplied has a direct nexus with the tax imposed and therefore the imposition of tax on lotteries as goods on the face value of the lottery ticket did not suffer from any constitutional infirmity. However, the imposition of tax on the amount paid by a participant for the buy in to participate in the game, which *buy in* is paid out as the winnings of the successful participant(s), stands on a qualitatively different footing in relation to the service rendered by the platform. This judgement does not in any manner support the extraordinary suggestion that the total amount of buy ins should be treated as the value of the service rendered for imposition of tax.

32. These differences are material to the validity of the proposed valuation rule for online gaming companies. The lottery ticket is in and of itself the "supply" by the lottery operator and its face value is therefore treated as the value of the "supply" by the lottery operator and therefore exigible to GST. The "supply" by the online gaming company, on the other hand, is limited to providing a platform and facilitating gameplay, without any role, involvement or interest in the quantum of winnings involved in the games nor in the outcome of the games. The judgment in *Skill Lotto* (supra) was therefore rendered in materially different factual circumstances and offers little support to the validity of the proposed alteration of the valuation rules. To the contrary, as brought out above, the judgment sharply highlights the *sui generis* nature of lotteries and betting and should properly be read as adjudicating the legal position only in this context.

33. In this background, I answer the queries posed to me as follows:

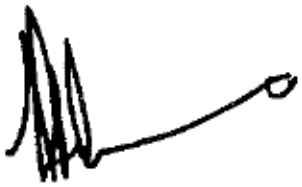
a. ***Whether the legal interpretation employed by the Querist is valid?***

b. ***In case a new valuation rule is introduced proposing to levy GST on total amount i.e. contest entry amount) would that be ultra-vires / violative of GST provisions specifically relating to the levy (Section 9 of CGST) and Section 15 (Valuation provision)?***

c. ***What are the chances of success before the Hon'ble High Court / Hon'ble Supreme Court if the Querist prefers a writ challenging the valuation rules, in***

case the said rules seek to levy GST on amounts deposited by the players for playing online games (Contest entry amount)?

For the reasons detailed above, in my opinion, a new valuation rule levying GST on the full amount of the Contest Entry buy-in would be ultra vires the parent statute, and even if the CGST is amended, the amendment of the primary legislation would be lacking in legislative competence.



19.08.2022 **HARISH SALVE QC**

Blackstone Chambers

London EC4Y 9BW

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

Unnigiri, 5-9-163 Chapel Road, Nampally, Hyderabad–500 001, India

Landline: +91-40-23234924
E-mail: Lshyd@lakshmisri.com

Fax: +91-40-23234826

LEGAL OPINION

To	**M/s. EGaming Federation**	**Client Address:**
Date	22.7.2022	Office No. 001/A- Wing, Koval Tower, B. J. Patel Road, Malad (West), Mumbai- 400064.
Issue	**GST implications on online skill gaming platforms**	

CONTENTS

A. EXECUTIVE SUMMARY

i. The term 'Betting' mentioned under entry 34 of the 7th Schedule of List II of the Constitution of India has been judicially interpreted to mean betting on games of chance. Online Games based out of skill are not in the nature of gambling and betting.

ii. The contribution made by the players of online game towards the prize pool constitutes an actionable claim other than lottery, betting and gambling. Thus, the said amount is explicitly covered at para 6 of Schedule III of the CGST Act and not leviable to GST. Thus, the Platforms are not liable to collect and discharge GST on the portion of players' contribution which forms the part of the prize pool that is an actionable claim.

iii. The Platforms are collecting a specific amount as 'platform fees' as consideration for such supply of services which is known to players and platforms. This amount is taxable under GST and attracts GST @ 18%.

iv. As the online skill games and games of chance (betting or gambling) are not same and substantive provision clearly treats actionable claims as not supply of goods or services similar valuation rule as that of lottery, betting and gambling i.e. Rule 31A(3) of the CGST Rules should not be applied for determining the value of supply of online skill games. If Rule 31A(3) is applied, it can be argued that the same amounts to manifest unreasonableness and arbitrariness as it amounts to giving same treatment between un-equals and is in violation of Article 14 of the Constitution of India and is also ultra vires the provisions of the CGST Act.

B. BRIEF FACTS

1.1 E-Gaming Federation (hereinafter referred to as '**EGF**') is a non-profit organization established under the Societies Regulation Act. It was established to develop and self-regulate the e-gaming industry in India. EGF aims to establish a unified voice of the online gaming industry in India.

1.2 EGF's objective is to create a standard structure of e-gaming in India for the smooth functioning of the online gaming ecosystem.

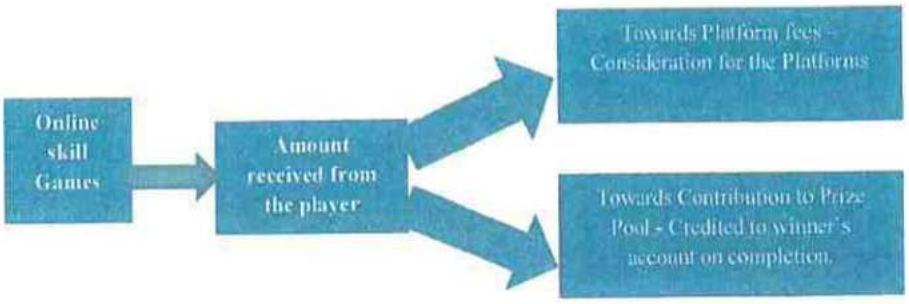
1.3 Various online platform companies are registered under EGF. As per the terms agreed between the players and the Platforms, the players of online game of skill (which include games like Rummy and Fantasy Sports amongst other games of skill collectively referred as "games of skill") are notified of the specific consideration payable towards the supply of facilitation services and provision of gaming platforms by the Platforms.

1.4 This amount is retained by the Platforms as consideration for the platform services provided to the players. The players are also informed about the contribution towards the prize pool payable to the winners of the games of skill.

1.5 The prize pool contribution is held by the Platforms in fiduciary capacity for a brief period of time (i.e., from start of the game till completion), subsequent to which, the amount is distributed to the winners in accordance with the announced prizes of the game.

1.6 It is informed that in respect of manner of bifurcation of the amount collected as consideration for services and contribution towards prize pool is duly communicated to all the players through the 'Terms & Conditions' available on the Platform's website.

1.7 The payment by the player for services received from the Platforms and contribution to prize pool is pictorially depicted as follows:



1.8 The Platforms are discharging GST @18% on the amount retained towards platform fee for the services provided to the players as this is the consideration towards the services rendered to the players participating in online Skill Games

C. QUERIES

2. In the above background, EGF has sought our legal opinion on the following queries:

(a) What are the GST implications on online skill gaming platforms ("Platforms") where the platform operators charge a service fee which is a pre-determined percentage share on the entry fee or a fixed fee to be charged from the players in the games?

(b) Whether determination of value of supply of online skill games at par with Betting/Gambling/Casino would be in violation of Article 14 of the Constitution of India and ultra vires the provision of the statute?

D. QUERIES AND VIEWS IN DETAIL

Query 1

3. What are the GST implications on online skill gaming platforms ("Platforms") where the platform operators charge a service fee which is a predetermined percentage share on the entry fee or a fixed fee to be charged from the players in the games?

Our Views

GST is a transaction-based levy and leviable only on consideration agreed to be paid between parties:

3.1. Section 7 of the Central Goods and Services Tax Act (hereinafter referred to as the **'CGST Act'**) provides for the scope of 'supply' for the purposes of levy of GST. As per the said section, every supply of goods or services, made for a consideration in the course or furtherance of business shall constitute a taxable supply.

3.2. Section 7(2) of the CGST Act specifies that activities or transactions listed in Schedule III shall neither be treated as supply of goods nor supply of services. It states as follows:

> *"(2) Notwithstanding anything contained in sub-section (1),—*
>
> *a. activities or transactions specified in Schedule III; or*
>
> *b. such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services."*

3.3. Schedule III of the CGST Act lays down certain items that shall not be treated as supply of goods or supply of service and one such exclusion at para 6 is 'actionable claims', other than lottery, betting and gambling.

3.4. Section 2(31) of the CGST Act defines the term 'consideration' which states that consideration in relation to supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of the supply of goods or services or both, whether by the recipient or by any other person.

3.5. Section 9 of the CGST Act while providing for the levy and collection of tax, clearly indicates that the tax shall be leviable on the supply of goods and services, on the value determined under section 15 and at the rate as may be notified by the Government.

3.6. It may be noted that in the present case, the amount being received by platforms from the players is in two ways viz. service charge/platform fees towards the service of provision of platform and contribution towards prize pool which is distributed to the winner of the game.

GST Liability on Platform fees:

3.7. As discussed above, consideration means any payment made or to be made in relation to supply of goods or services or both. It is relevant to mention that the Hon'ble Supreme Court in the case of ***Commissioner of Service Tax v. Bhayana Builders (P) Ltd [2018 (10) G.S.T.L. 118 (S.C.)]***, held that consideration for the taxable service shall be the amount received towards the provision of the taxable service and any other amount received not for the provision of service is not included in the taxable value.

3.8. In the present case, the Platforms are engaged in the provision of a supply of platform services. The amount collected and retained by the Platforms in the form of service charge or platform fee would be treated as consideration towards the platform services in terms of Section 2(31) of the CGST Act.

3.9. **Thus, the 'service charges/platform fees' which is collected and retained by the Platforms is the actual consideration and accordingly, the said amount would be the value of supply for discharge of GST by the Platforms.**

GST implications on amount received towards contribution to Prize Pool:

3.10. Now, we shall proceed to analyze the GST Implications on the amount received from the players towards contribution to prize pool and distribution the same to winners after completion of the game.

3.11. For determining whether contribution towards the prize pool should form part of the value for supplies being made by the Platforms for the levy of GST, it is relevant to note that the prize pool does not constitute any part of the revenue for the Platforms. Rather, the said amount is in the nature of deposit which the players keep and the winners stake claim to such pooled amount as prize.

3.12. In other words, the Platforms do not have any control or dominion over the 'prize pool', they hold said amount on trust/escrow for the players till the winners are determined i.e. till completion of the game. The said amount is not accounted in their books as revenue or expenditure.

3.13. For facilitation of payments toward the games a Closed-Wallet is maintained and managed by the Platforms. The players keep making adhoc payments in the Wallet as deposit which is refundable in nature. As and when the players decide to participate in a game, part of the deposit amount is appropriated towards specific amount payable for participating in the game, constituting supply of facilitation services and contribution towards the prize pool payable to the winners.

3.14. Thus, it can be said that such amount is held in 'trust' in a fiduciary capacity, and subsequently distributed among the winners does not constitute any consideration for the Platforms.

3.15. The fact that the said amount is neither retained by the Platforms nor forms part of its revenue clearly establishes that the same does not constitute a consideration under Section 2(31) of the CGST Act towards any supplies made by the Platforms.

Contribution to prize pool by players in a skill game is an actionable claim:

3.16. It is important to analyse the provisions of the CGST Act to assess the status of games of skill as an actionable claim for the purpose of GST. Section 2(1) of the CGST Act defines actionable claims as:

"(1) "actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;"

3.17. Transfer of Property Act defines 'actionable claims' under Section 3 as:

"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, accuring, conditional or contingent;"

3.18. The Supreme Court in **Sunrise Associates v Govt. of NCT of Delhi [(2006) 5 SCC 603].** was required to determine as to whether a lottery ticket constitutes an 'actionable claim' or 'goods' for the purposes of levy of Sales tax. The Apex court held that the lottery tickets represent a claim to a conditional interest in the prize money which is not in the purchaser's possession.

3.19. As mentioned above, Schedule III of the CGST Act lays down certain items that shall not be treated as supply of goods or supply of service and one such exclusion at para 6 is 'actionable claims', other than lottery, betting and gambling.

Online game of skill hosted by the Platforms are not betting or gambling.

3.20. The terms lottery, betting and gambling are not defined in GST law. Accordingly, we may refer to judicial pronouncements or relevant laws in this regard.

3.21. It is pertinent to note that any game where winning/ success is predominantly dependent upon substantial degree of skill of the participating players will be considered as 'games

of skill'. The players compete with other players in individual format, while predominantly relying on their skill and specified rules to win the games. Playing the games require the crucial role of competitiveness, memory, adroitness, relevant skills, expertise and mental exertion required for winning.

3.22. It is to be noted that playing of online game of skill requires a predominant amount of skill while playing the game. In the case of **State of Andhra Pradesh v. K. Satyanarayana & Ors AIR 1968 SC 825,** the Supreme Court relying on the skill test held that, rummy is preponderantly a game of skill and not of chance. The Court held that fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards to form valid sets and sequences of the 13 cards in hand. It is not merely or only based on the chance that the rummy can be won. It involves considerable memory, working out of percentages, the ability to follow the cards on the table and constantly adjust to the changing possibilities of the unseen cards. Thus, it is fairly clear that the contest is predominantly dependent on the skill of the participants than the element of chance.

3.23. Similarly, in the case of fantasy sports, the drafting of teams requires material and considerable skills in terms of 'drafting' and 'playing' which are the determinative factors in the results of the game and winning and is thus characterized as a Skill Game.

3.24. In the Public Interest Litigation petition filed before Hon'ble Rajasthan High Court in the case of Ravindra Singh Chaudhary Vs Union of India (Civil Writ Petition No. 20779/2019 decided on 16, October 2020), the Hon'ble High Court held that since the result of fantasy game depends on skill of participant and not sheer chance, and winning or losing of virtual team created by the participant is also independent of outcome of the game or event in the real world, online fantasy game offered by Dream11 platform is a game of mere skill and not gambling/betting.

3.25. Similarly, in Public Interest Litigation petition filed before Hon'ble Rajasthan High Court in the case of Chandresh Sankhla vs The State Of Rajasthan (Civil Writ Petition No.

6653/2019 decided on 14, February 2020), the Hon'ble Court finds that the issue of treating the online fantasy game conducted under the platform of "Dream 11" as having any element of betting/gambling is no more res integra in view of the pronouncements by the Punjab and Haryana High Court (Varun Gumber case) and Bombay High Court (Gurdeep Singh Sachar case) and further the SLPs filed before Supreme Court have also been dismissed against the orders of these High Courts.

3.26. The Supreme Court in the case of **Avinash Mehrotra vs. The State of Rajasthan & Ors.** In **SLP (C) No. 18478/2020** has reaffirmed the judgement of the Punjab and Haryana High Court in the case of Varun Gumber **[CWP No. 7559 of 2017]** and held as follows:

> *"We have heard Mr. Prashant Kumar, learned counsel for the petitioner who continues to press for adjournment, and points out a judgment dated 06.02.2020 of the State of New York Supreme Court, Appellate Division which is at page 139 of the paper book in which, according to him, the fantasy sports spoken of in this matter are pure gambling and not games of skill.*
>
> *This matter is no longer res integra as Special Leave Petitions have come up from the Punjab & Haryana High Court and have been dismissed by this Court as early as on 15.06.2017. Also, from the Bombay High Court, Special Leave Petitions have been dismissed on 04.10.2019 and 13.12.2019."*

3.27. The Supreme Court in the case of **RMD Chamarbaugwala v. Union of India [AIR 1957 SC 699]**, extensively discussed 'games of chance vs games of skill'. The pertinent observations by the court may be extracted as follows:

"The Court of Appeal in the judgment under appeal has shown how opinions have changed since the earlier decisions were given and it is not necessary for us to discuss the matter again. It will suffice to say that we agree with the Court of Appeal that a competition in order to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill. Therefore, a competition success wherein does not depend to a substantial degree upon the exercise of skill is now recognised to be of a gambling nature."

emphasis supplied

3.28. Further, basis the observations made in the above judgement, the Supreme Court held the rummy game to be game of skill in **K. R. Lakshmanan v State of Tamil Nadu [AIR 1996 SC 1153]** held the following:

"Games may be of chance, or of skill or of skill and chance combined. A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, the shuffling of the cards, are all modes of chance...A game of skill, on the other hand - although the element of chance necessarily cannot be entirely eliminated - is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the Participant(s). Golf, chess and even Rummy are considered to be games of skill."

3.29. Here, a reference can also be made to the recent Hon'ble Madras High Court decision in the case of **M/s. Junglee Games India Pvt. Ltd. v. State of Tamil Nadu [(2021) SCC OnLine Mad 2762]** wherein, the High Court observed that online rummy and poker are games of skill as they involve considerable memory, working out of percentages, the ability to follow the cards on the table and constantly adjust to the changing possibilities of the unseen cards.

3.30. Various Courts have on multiple occasions held games like chess, bridge etc. to be Skill Games as the exercise of mental acumen is required to play and win such games. Similarly, sporting activities are also categorized as games of skill under Indian laws.

The meaning of the term 'Betting' in the Indian Constitution

3.31. In the above referred case of **M/s. Junglee Games India Pvt. Ltd. v. State of Tamil Nadu**, the Madras High Court has held that the term 'Betting' in Entry 34 of the Second List of Schedule 7 in the Constitution of India is limited to betting on activities based on chance only. The relevant portions are quoted below:

> ***"118. It is in such light that "Betting and gambling" in Entry 34 of the State List has to be seen, where betting cannot be divorced from gambling and treated as an additional field for the State to legislate on, apart from the betting involved in gambling. Since gambling is judicially defined, the betting that the State can legislate on has to be the betting pertaining to gambling; ergo, betting only on games of chance.*** *At any rate, even otherwise, the judgments in the two Chamarbaugwala cases*

and in K.R. Lakshmanan also instruct that the concept of betting in the Entry cannot cover games of skill. .....

*119. In the State bringing in the Ordinance in November, 2020, which was later adopted as the Amending Act, the legislature erred in expanding its field of legislation by widening the scope of gambling and ascribing a connotation to betting that the relevant Entry in the State List does not envisage. **It is true that the Entry "Betting and gambling" appears, at first blush, to cover the possible distinct fields of betting and gambling; but the law as declared defines gambling as a game of chance which skill cannot control; and, the authority conferred on a State legislature by the relevant Entry appears to be confined to the arena of betting in games of chance. Viewed in such perspective, the impugned legislation does not appear to be genuinely referable to the field of legislation allotted to the State under Entry-34 of the State List.**"*

3.32. The Karnataka High Court in the case of **All India Gaming Federation v. State of Karnataka** in **WP 18703/2021** has also similarly interpreted the scope of Entry 34 of the State List and defined the term 'Betting' as follows:

"The two words namely "Betting" and "gambling" as employed in Entry 34, List II have to be read conjunctively to mean only betting on gambling activities that fall within the legislative competence of the State. To put it in a different way, the word "betting" employed in this Entry takes its colour from the companion word "gambling"."

Legal protection to games of skill as a permitted legal activity

3.33. The Public Gambling Act, 1867 ("the Act"), which is a pre- independence legislation, is an Act to provide for the punishment of public gaming and the keeping of common gaming- house in certain areas to which it extends. After Independence, several states adopted this act and several other states enacted laws on the lines that gambling/ chance based activities should be prohibited whereas such provisions shall not extend to Skill Games.

3.34. Recently, the High Courts of Tamil Nadu, Kerala and Karnataka have set aside state laws which have sought to ban or criminalize Skill Games as gambling activities stating that these are unconstitutional in the following cases,

a. M/s. Junglee Games India Pvt. Ltd. v. State of Tamil Nadu (2021) SCC OnLine Mad 2762
b. Head Digital Works Private Limited vs. State of Kerala (2021) SCC Online Ker 3592
c. All India Gaming Federation v. State of Karnataka in WP 18703/2021

3.35. In light of the above discussed judgments and legislative intention, which seeks to define the scope and meaning of 'game of skill', it is clear that games of skill are a separate and distinct category from games of chance. While games of chance are treated as "res extra commercium", Skill Games have been treated as 'trade and commerce' which have been held by the Supreme Court in the Chamarbaugwala case as constitutionally protected activities under Article 19(1)(g) of the Constitution of India.

3.36. In the two cases of RMD Chamarbaugwala it has been held that games of skill are trade and commerce and the law with respect to betting and gambling was in substance a law relating to gambling competitions and not in relation to games of skill. The relevant sections of these two judgments are quoted below:

a. The State of Bombay Vs. Respondent: R.M.D. Chamarbaugwala AIR 1957 SC 699,

> *"25 ..... In our view, the section, on a true construction, covers only gambling prize competitions and the Act is a law with respect to betting and gambling under Entry 34. ....."*

b. R.M.D. Chamarbaugwalla Vs. The Union of India AIR 1957 SC 628

> *6 ..... As regards competitions which involve substantial skill, however, different considerations arise. They are business activities, the protection of which is guaranteed by Art. 19(1)(g).....*

3.37. From the above discussions and judicial pronouncements, it is clear that the online Skill Games being hosted by the Platforms are permitted business activities and hence not 'gambling' or 'betting' or 'lottery' under Indian Constitutional law, the State Gambling Legislations and the judicial pronouncements for Courts in India.

3.38. Value of a taxable supply is required to be determined in accordance with Section 15 of the CGST Act. The relevant portion of the provision is extracted as follows:

> *"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..... "*
>
> *... emphasis supplied*

3.39. Section 15(4) of the CGST Act, 2017 provides that the value has to be determined as per rules only if the actual value of the transaction is not determinable. It is a settled principle that deemed valuation shall not be used if the actual value can be ascertained. Gujarat High Court in the case of Munjaal Manishbhai Bhatt vs. Union of India (06.05.2022 - GUJHC) MANU/GJ/1379/2022 ruled that the deeming fiction if held arbitrary and contrary to the scheme of the act, then it can be held to be ultra-vires. It states as follows:

> *"Be that as it may, wherever a delegated legislation is challenged as being ultra-vires the provisions of the CGST Act as well as violating Article 14 of the Constitution of India, the same cannot be defended merely on the ground that the Government had competence to issue such delegated piece of legislation. Even if it is presumed that the Government had the competence to fix a deemed value for supplies, if the deeming fiction is found to be arbitrary and contrary to the scheme of the statute, then it can be definitely held to be ultra-vires."*

3.40. In case of online gaming platforms, the platform fee can be deciphered from records and terms of contract in every case and thus the actual transaction value would be available for supply of services by such online gaming platforms.

3.41. Rule 31A(3) of the CGST Rules, 2017 provides that 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. It is relevant to note that Rule 31A(3), in so far as it relates to actionable claims with respect to horse racing, which is a game of skill, is subject to litigation and it is not legally established that a skill game can be treated as an actionable claim which can be covered under Rule 31A(3) when the provisions of the CGST Act itself treats actionable claims relating to Skill Games as neither as a supply of goods nor a supply of services in terms of Entry 6 of Schedule III to the CGST Act.

3.42. As mentioned above, Rule 31A(3) of the CGST Rules, 2017 provides that the value of supply of an 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.

3.43. Since online skill games are neither betting, gambling or lottery as per Schedule III of the CGST Act, any actionable claims relating to games of skill are neither a supply of goods nor a supply of services and therefore not subject to levy of GST.

3.44. Thus, Rule 31A(3) of the CGST Rules, 2017 which deals with betting, gambling or horse racing in a race club is not applicable to online skill games as these cannot be treated as betting, gambling, horseracing or lottery and taxable value that is leviable to GST in the online skill games is identifiable.

3.45. As mentioned above, online Skill Games do not fall under 'gambling' or 'betting' as per the interpretation given by the Supreme Court and several High Courts in India.

3.46. **Accordingly, the said contribution made by the players towards the prize pool constitutes an amount towards an actionable claim which does not fall under the category of lottery, betting or gambling activities. Therefore, such actionable claim is covered by para 6 of Schedule III of the CGST Act and hence not leviable to GST. The Platforms are not liable to collect and discharge GST on the portion of players contribution which forms the part of the prize pool which is an actionable claim.**

3.47. **The specific amount collected as 'platform fees' being a consideration for such supply of services is taxable under GST.**

3.48. The said services are classifiable under HSN code 998439 (other on-line content n.e.c.) as the said entry covers games that are played on the internet. GST at the rate of 18% shall be applicable on the said amount of consideration as per Notification No.11/2017 - Central Tax Rate dated 28.06.2017.

Query 2:

4. Whether determination of value of supply of online skill games at par with Betting/Gambling/Casino would be in violation of Article 14 of the Constitution of India and ultra vires the substantive provision of the Act?

Our Views:

4.1 In light of the aforesaid discussions, it is clear that there is well-established difference between games of skill and "betting or gambling". Further, each of the transactions for online skill games are clearly identifiable i.e., value towards actionable claim and the consideration towards platform fee. However, in case of betting or gambling there is no such identification or bifurcation in the total amount received.

4.2 Article 14 of the Constitution of India deals with 'Equality before law', which provides that the State shall not deny to any person equality before the law or the equal protection of the laws with in the territory of India.

4.3 It is relevant to note that it is settled principle that the Government is entitled to tax one class of persons as against the other as long as the classification made is not arbitrary and artificial or evasive. Any legislation according differential treatment among equals is arbitrary in nature and on the same lines, applying same treatment among un-equals is also arbitrary.

4.4 In this regard, reference can be made to the case of ***Sharayo Bano v. Union of India [(2017) 9 SCC 1]***, wherein, the Hon'ble Supreme Court defined the term 'arbitrary' as under:

> *"101 Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally, and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary."*

4.5 Further, in the case of ***Gurucharan Singh v. Ministry of Finance 2021 (49) G.S.T.L. 113 (Del.)***, the Delhi High Court has observed that while differential treatment by forming different classes is permissible; what is not permissible is the distinctions made that are unjust and unreasonable when correlated with the object sought to be achieved by the State.

4.6 It is also relevant to note that in the case of ***All India Gaming Federation v. State of Karnataka in WP 18703/2021*** (discussed above), the Hon'ble Karnataka High Court held as follows;

> *"the persons who play games of chance and the persons who play the games of skill (in terms of predominance test) unjustifiably made to constitute one homogenous class. Our Constitution does not permit things which are different in fact or opinion to be treated in law as though they were the same. The doctrine of equality enshrined in Article 14 is violated not only when equals are*

treated unequally but also when un-equals are treated equally disregarding their difference."

4.7 Further, in the case of ***M/s. Junglee Games India Pvt. Ltd. v. State of Tamil Nadu (2021) [SCC Online Mad 2762]*** discussed above, the Madras High Court at para 107 of the Judgment stated that the '*wording of the amending Act is so crass and overbearing that it smacks of unreasonableness in its every clause and can be seen to be manifestly arbitrary*'. Accordingly, it was held that the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 which prohibits all forms of games being conducted in cyberspace, irrespective of the game involved being a game of mere skill, if such game is played for a wager, bet, money or other stake must be seen to be so unreasonable as to be branded as manifestly arbitrary.

4.8 Since it is already concluded above that online skill games is not game of chance, equating game of skill with betting or gambling will squarely attract the vice of arbitrariness which is prohibited under Article 14 of the Constitution as explained above.

4.9 Further, as discussed above, Section 7 read with Entry 6 of Schedule III of the CGST Act treats actionable claims other than in case of lottery, betting or gambling as neither supply of goods nor services. Rules of valuation making actionable claims liable to tax for online games of skill would be ultra vires Section 7 read with Entry 6 of Schedule III of the CGST Act.

4.10 **In view of the above, it can be said that in the present case, online skill games and betting or gambling (game of chance) are clearly distinguishable. Accordingly, the value (full value) determined as per Rule 31A(3) of the CGST Rules for discharge of GST regarding betting, gambling or horse racing should not be adopted for discharge of GST in case of online skill games.**

4.11 Applying the said rule to online skill games at par with betting or gambling amounts to manifest unreasonableness and arbitrariness and is in violation of Article 14 of the

Constitution of India as it amounts to applying same treatment between un-equals. The said rules would also be susceptible to challenge as ultra vires the substantive provisions under the CGST Act.

Scope Limitation

This Opinion is based on the facts made available to us in the request for opinion and on the statutory/legal position including the judicial and administrative interpretations thereof prevailing up to and inclusive of the date of opinion.

MATHIVANAN N NARAYANAN

N. Mathivanan
Principal Partner
For Lakshmikumaran and Sridharan Attorneys

Annexure-VIII

F. No. 190354/100/2022- TO (TRU II) – CBEC
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)
***

Room No. 156, North Block, New Delhi
The 26th September, 2022

OFFICE MEMORANDUM

Subject: Obtaining legal opinion as per request of Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming- reg.

Kindly refer to mail dated 19.09.2022 conveying the directions of Hon. Convener of GoM on Casinos, Race Courses and Online Gaming to obtain legal opinion from Solicitor General of India on the points listed in the mail pertaining to horse racing and online gaming.

2. It is requested to convey to Hon. Convenor of GoM on Casinos, Race Courses and Online Gaming that the GoM may kindly finalise the policy recommendations and legal opinion, if required, would be taken by Union Government. It is also pertinent to mention that Terms of Reference of GoM does not include seeking/considering legal opinion.

26/9/2022

(Limatula Yaden)
Joint Secretary (TRU-II)
Tel No.:011-2309 2687
Email – l.yaden@gov.in

To,

The Hon. Chief Minister, Convenor of GoM, through CCT, Meghalaya

(The CCT of Meghalaya is requested to kindly inform Hon. Chief Minister)

Mauvin H. Godinho
Minister for Transport, Panchayats,
Industries, Trade and Commerce & Protocol and Hospitality
Member of GST Council
302, Ministerial Block, Third Floor, Secretariat, Porvorim, Goa-403521
Tel. No.: 0832-2419534 Fax: 0832-2419837

No. Date: 28/09/2022

To,
The Hon'ble Convenor
Group of Ministers for Casino, Race Courses and Online Gaming.

Sub: Request for kind intervention regarding valuation for GST with regards to Casinos.

Ref: Group of Ministers' ('GOM') decision on methodology of valuation for GST for Casinos.

Sir,

In reference to the Group of Ministers' meeting regarding Casino, Race Courses and Online Gaming held on September 5, 2022, I would like to draw the attention of your good self to the the below mentioned points which I had raised in the GST Council Meetings as well as earlier meetings of the GoM as the same are extremely pertinent for the continuation of the industry and tourism activity in the state of Goa.

The GoM in its earlier report had recommended the rate of GST on Casinos, Online Gaming and Horse Races should be fixed at 28% uniformly.

For casinos specifically, it was decided that

- GST @ 28% should be levied on 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.
- 28 % should be charged on the betting activity based on purchase of chips / coins (on face value) i.e. on the entire betting amount rather than the earning of the provider.

In this context and with this background, I, on behalf of Government of Goa would like to place the following issues on record for your kind consideration:

1. Since beginning, Goa has proposed to the GoM that the valuation for taxing Casinos should be done on ***Gross Gaming Revenue*** (GGR i.e. Net Value after deducting the chips returned by the players).

2. **Pre-GST Era** : It is pertinent to note that the same methodology of computation of tax i.e. GGR was being implemented in the pre-GST era i.e. for the calculation of entertainment tax @ 15 % apart from tax on entry fee as prescribed. Assessment for the Gaming Tax and Entry Fee have been completed till 30th June 2017 on the basis of GGR under the Goa Entertainment Tax Act, 1964.

3. Post the implementation of GST, Casinos started paying taxes at a revised percentage of 28% on the same method of valuation as was prescribed and applicable under pre-GST regime which was on GGR vide entry 34(v) of Notification dated June 28, 2017 (Service Rate Notification).

4. **Genesis of the issue** : It is brought to your notice that the insertion of Rule 31A (3) of CGST Rules, 2017 in 2018 i.e. *"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"* was done solely at the behest of the Government of Maharashtra who had raised a concern regarding horse racing industry in 25th GST Council Meeting i.e. that the horse racing industry using the provisions of Section 15(1) may start paying the taxes on GGR instead of Face value post the implementation of GST regime which would be a divergence from the practice from what they were doing in the pre-GST regime. The blanket application of the rule to **ALL** categories of businesses under the head of 'Gambling & Betting' needs to be reexamined by the group in this light. **(Annexure A)**.

5. The matter was also discussed in the 37th GST Council meeting wherein the fitment committee had recommended the 'value of supply' as the value of bets placed reduced by the payouts given to winners as one of the options **(Annexure B)**. Subsequently, the aforementioned GoM was constituted to evaluate all three forms of gaming i.e. casinos, horse racing and online gaming .

6. It may kindly be noted that the entire casino industry globally follows a uniform methodology of valuation and computation of tax which is based on GGR and not the Face Value. The comparative method of valuation in other countries is attached at '**Annexure C**'. Therefore, there is no rationale for divergence from this globally tried and tested system.

7. Your kind attention is further drawn to the fact that the games offered in the casinos are predominantly games of international standards, played across the globe in the exact identical fashion. These games are based on probabilities and have an inherent house advantage/house edge ranging from 1% to 3 %, which effectively results in the casino/house holding/retaining anywhere between 16% to 20% of the money wagered. This is true for all casinos globally. Therefore, the onerous valuation methodology being proposed of the gross receipts being taxed instead of net revenue shall lead to industry closure.

8. Further, if it is proposed that the deduction of GST be made from the customer i.e. deduction of GST from his initial buy-in, I would like to impress upon that this concept of charging is unheard of and not a global practice. India's neighbouring countries such as Nepal and Sri Lanka who permit casino gaming do not levy any tax whatsoever on the buy-in, making them preferred and attractive destinations to go to, in the event this onerous valuation methodology is adopted and implemented.

9. Goa had raised the legitimate concern that the changed valuation for activity in casinos may push customers either towards foreign countries or to informal / illegitimate channels and shall drive down betting through formal channels. This kind of illegal betting would adversely impact casino business as well as the tourism industry of Goa. This would eventually lead to loss of livelihood of casino employees as well as adverse effects on other ancillary industries such as taxi operators, restaurants, beach shacks, hotels, airlines, etc. The proposed change in the methodology for computation of valuation of Casinos for the purpose of payment of GST will act as the final straw on the camel's back, breaking it completely, leading to catastrophic effects such as reduced visitations resulting in eventual closure of business having ripple effect on other ancillary industries as well.

10. **Issues in methodology suggested :** As in the suggested methodology, there is a lack of an underlying supply of actionable claims upon mere exchange of chips at the cage. The value of supply can be determined / crystallised only on the conclusion of the supply when the chips are returned to the cage. Separately, it should be noted that as per the principles of GST laws, where tax is levied on supply of goods, the provision for reversal of such tax on return of goods is also duly provided for in the general law. Accordingly, in the case of casinos, chips returned should also be given due consideration while levying tax. Any levy or collection of tax in isolation of goods returned is against the basic principles of taxation and does not represent the correct value

of supplies made by the casino operators. Similarly, if the returns are not given due consideration, the legitimate purchaser of chips (after paying taxes) will resell it to the next player or in the black market after his play is over, depriving the government of its revenue which will make the entire system unworkable. Therefore, while the system of taxation on GGR may be agreed to, measures to ensure true declaration of GGR be put in place such as prescribing purchase of chips through digital transactions only to prevent tax evasion.

11. It is further mentioned that the taxable value of supply of actionable claim may be based on the GGR of the casino as the same is a more certain and efficient measure for levy and bares as cogent nexus with the supply of actionable claim.

12. In conclusion, there is no objection to levy of tax on entry fee as suggested by the GoM earlier but it is submitted that GST should be levied on the GGR (i.e. the consideration received by the casino). Therefore, it is requested that the decision of the GoM be revisited to carefully consider/study the issue and come up with a separate rule for casinos to levy GST on the Gross Gaming Revenue ('GGR'). The GGR was the basis of calculation of Entertainment Tax in pre-GST era as well. The same method is *globally* accepted and implemented as such, and the value of supply is calculated on GGR basis for computing taxes thereon. Therefore, it is requested that a separate sub-rule in Rule 31A on aforesaid lines be inserted with respect to casinos.

13. The comments with respect to online gaming and horse racing shall be shared in due course as the legal opinion on the matter is received and shared with all the members.

14. I look forward to your good authority's support and intervention in this matter.

Yours sincerely,

(Mauvin H. Godinho)

Encl: as above.

35th

a. The differential rate of GST for State organized lotteries and State authorized lotteries (12% and 28% respectively) should continue.

b. Regarding the place of supply rules for paper lotteries, decision of the 28th GST Council Meeting should be strictly adhered to for reasons cited above. Any deviation would be ultra vires to Lottery Regulation Act and Rules and as such, it should not be made.

c. Present system of valuation of lottery on MRP should continue as it ensures more transparency. Lotteries should be traded as "goods" only.

d. Kerala was an online lottery free zone and under no circumstances, Government of Kerala would permit sale of online lotteries within the State.

Kerala was willing to negotiate with the North Eastern States to address their concern regarding revenue from lotteries and he pleaded that this agenda might be deferred giving room for further negotiations.

27.24. Shri M.S. Srikar, CST, Karnataka stated that there was intelligible distinction between the two types of Lotteries. Further, as regards the question whether there should be a single rate or double rate, his State would go with the consensus decision of the Council. The Hon'ble Minister from Jharkhand stated that in his State, there was no Lottery. Further, he believed that lottery should be banned. However, if the Federal structure was at stake, then the Council should go for a single rate and that too, the highest rate, because he believed in one nation, one rate. Advisor (I/c Finance) to Governor of Jammu & Kashmir stated that there was no lottery in his State and he would go with consensus on the subject.

27.25. The Hon'ble Minister from Goa stated that he was also a member of the GoM on Lottery and a lot of deliberation had been done on the subject. Now Punjab was of the view that the Council should wait for the decision of the Hon'ble Supreme Court. Further, the Hon'ble Supreme Court had clearly opined that the views of the GST Council should be made known to them by a specific date. Thus, the Council needed to decide first on it. On all other occasions, the Council had converged to a decision but on lottery, no consensus was emerging. The smaller States like Goa and other North Eastern States were being punished for the sake of revenue of the bigger States. He further stated that in his opinion, there should be one single rate as Goa preferred one nation, one tax. He also stated that he wanted to present the case of taxation of Casinos, where no other State was impacted as Casinos were only in Goa. He was not requesting for reducing the rate and was agreeable to any rate that was decided by the Council through consensus. However, the problem was regarding methodology and procedure for deciding the value for tax purpose i.e. face value or bet amount. It would be fair if net amount or Gross Gaming Revenue (GGR) was taxed, whereas, as on date, it was being taxed on face value. Hence, effectively, it was taxed at every bet or round; which would result in closure of casino. After mining had been stopped in Goa, the casino was a major source of revenue to the State and had also become a huge employment generating industry. The only proposal was that this matter should be referred to the Fitment Committee or the Law Committee so that the methodology and the tax on net amount or Gross Gaming Revenue (GGR) could be decided.

27.26. Shri Suresh Bhardwaj, the Hon'ble Minister from Himachal Pradesh, Capt. Abhimanyu, the Hon'ble Minister from Haryana, Shri Buggana Rajendra Nath, the Hon'ble Minister from Andhra Pradesh and the Secretary and Commissioner, State Tax from Chattisgarh submitted that lottery was banned in their States and its tax rate did not impact

CHAIRMAN'S INITIALS

Annex - I

1

25th

Annexure A

51.	CCT, Maharashtra	Clarification is sought onvaluation of supply of betting in Horse Racing. To provide clarity in the matter of valuation of these goods, provisions of section 15(5) may be invoked. Supply of Betting & Gambling is also required to be notified separately as per the mandate of Sub section 5 of Section 15 of the Act. Further, for valuation of the specified Goods, i.e. Betting & Gambling - valuation rules need to be prescribed separately on lines of Para 3 of Notification No. 11/2017 – Central Tax (Rate) / State Tax (Rate). Following rule 35A (2) may be inserted after Rule 35 in chapter IV, Determination of Value of Supply in CGST / SGST Rules, 2017. Rule 35A (2): Notwithstanding anything contained in the provisions of this chapter, value of supply of Betting & Gambling shallbe 100 % of the face value of the bet or the amount paid into the totalisator.	Valuation of betting & gambling (goods) will bcunder the provisions of Section 15(1) or Section 15(4) or Section 15(5). In view of the aforesaid sections and valuation rules, it is opinion of State of Maharashtra that since for betting & gambling, rules are not framed under Section 15(4) and 15(5), provisions of Section 15(1) will be applicable. But this provision may be mis-used by the trade by deducting the prize money from the amount paid for betting and treating the remaining amount as the transaction value liable to be taxed under Section 15(1). The same issue is applicable in case of lottery also. However, in case of lottery, the issue is handled by providing rule of valuation of lottery in Notification No. 11/2017- Central Tax (Rate). Similar rule is also required for valuation of betting in order to eliminate the possibility of deducting prize money from the bet amount for the purpose of valuation.	Proposal of Maharashtra to insert following valuation rule in the rules may be accepted: Notwithstanding anything contained in the provisions of this chapter, value of supply of Betting & Gambling shall be 100 % of the face value of the bet or the amount paid into the totalisator. **Fitment Decision:** Following provision may be inserted in GST rules under section 15 of Act: - Notwithstanding anything contained in the provisions of this chapter, value of supply of Betting & Gambling shall be 100 % of the face value of the bet or the amount paid into the totalizator.

		(It is assumed that a new Rule 35A(1) for lottery on similar lines is inserted in CGST / SGST Rules, 2017) The whole discussion with respect to betting is equally applicable to gambling also. (Refer Entry (v) of Entry 35 in the Notification 11/2017-Central Tax (Rate) dated 28th June 2017). Hence, the amendments or the clarifications should be done considering gambling also. A legally binding clarification explaining taxation of lottery, betting & gambling, be issued as per present provisions of Law.			

Annexure B

37th.

Annex - III

Sl. No.	Proposal	Justification	Fitment Committee Recommendation
3	Request for clarification of taxability and valuation of supply in Casinos. Ref: CM of Goa	Goa state issues license for operating casinos in the State. In Casinos, there are two parts, first part is customer buys a package to enter the casino. Second part is gaming zone, where customer buys casino chips by exchanging legal currency. The valuation method prescribed in the Circular No. 27/01/2018-GST dated 04.01.2018 is practically difficult to implement as the customer plays many games at each table. Calculating GST on each bet in the gaming zone is not possible. In pre-GST regime, tax was paid on the next income of the Casino under the Entertainment Tax.	Recommendation: Deferred. Matter is before the GoM on lottery. (1) Option 1 The value of supply of gambling and betting services by a casino operator shall be determined in the manner as provided below: (i) In cases where the casino operator charges a commission or participation fee, by whatever name called, from the players, the said commission or participation fee shall be the value of the supply; or (ii) in all other cases, the value of the supply shall be the revenue of the casino operator and shall be calculated in the following manner, namely,- Value of supply = (Value of the total stakes/bets placed by players) - (the winnings and other amounts paid out to such players in connection with the said stakes/bets) Explanation:– For the purposes of this sub-rule, the value of supply shall be determined at the end of the day by reference to the aggregate taxable value of transactions during that day. (2) Option 2 (i) Rule 31A of CGST Rules may be amended as below: Value of supply in case of Casino:- (a) For entry into casino, the value of supply shall be 100 percent of the transaction value charged for the entry to the casino and (b) For gambling and betting services provided by a casino operator, the value of

able to attend the last meeting of the GoM and also the Hon'ble Minister from Goa had highlighted the need for further discussion in GoM which had till now only given an interim report. Hence, the GoM should be allowed to give its final report before it was discussed in the Council.

27.5. The Hon'ble Minister from West Bengal stated that he also could not attend the last meeting of the GoM due to some other commitments. He supported the proposal of the Hon'ble Ministers from Kerala and Goa. He suggested that the GoM should meet again as in the last meeting, four members of the GoM were not present. The Hon'ble Minister from Goa stated that there was a need to arrive at some consensus soon as due to high rate of tax on Lottery, unethical practices like *Matka, Satta*, etc. were picking up. He added that the issue should be discussed holistically and remedies arrived at. The Hon'ble Deputy Chief Minister of Delhi stated that few major States namely Punjab and Kerala could not attend the last meeting of the GoM and it was clear that more dynamic discussion was needed in the GoM before its recommendation could be brought back to the Council.

27.6. The Hon'ble Minister from Assam stated that this issue had been alive from the very first days of GST and the State of Kerala wanted to tax Lottery at the rate of 28%. He questioned as to why there should be a discriminatory tax rate regime on Lottery and as to why Lottery of Kerala (State-organized) should be taxed at the rate of 12% whereas lottery of North-Eastern States (State-authorised) should be taxed at the rate of 28% when it was run as per the prescribed guidelines by the Union Ministry of Home Affairs. He stated that any type of discriminatory tax rate should be removed. He further stated that even if the matter was deferred today, eventually there was a need to arrive at a just solution on this issue and the rate of tax would need to be made uniform, be it 12%, 18% or 28%. He added that discriminatory rate of tax should not be persisted with. He reiterated that the Union Home Ministry had allowed lottery to be run through authorized representatives and they were running the lottery as per those guidelines.

27.7. The Hon'ble Chairperson enquired whether inter-State sale of lottery could be prohibited. The Hon'ble Minister from Kerala stated that prior to GST regime, in his State there was a tax on paper lottery under the Paper Lotteries Act and they had made stringent law by legislation under the Gambling Act because of which, for eight years, no outside lottery could be run in the State of Kerala.

27.8. The Hon'ble Minister from Assam stated that legally a State which was running its own lottery could not ban Lottery from other States and that market access would need to be allowed to the Lottery of other States as well. The Hon'ble Minister from Kerala stated that on this account they had taken recourse to Section 4 of the Gambling Act to stop the outside lotteries. The Hon'ble Chairperson enquired that if Kerala had a State monopoly over lottery and there was no outside lottery running, then what was the issue regarding the rate of tax on lottery of other States like Mizoram, Assam etc. The Hon'ble Minister from Kerala stated that their position on this had been that such State authorized Lottery distributors violated provisions of Section 4 of the Gambling Act. He informed that court cases were going on this issue and there was also a CAG report on it and subsequently, Central Government banned such lotteries in the State of Kerala. He added that such lotteries (State-authorised) could run in their State now when GST was implemented, and the tax as per Paper Lotteries Act had

CHAIRMAN'S INITIALS

Annexure C

Sr. No.	Country	Tax Rates	Remarks
1	Singapore	• Land Based casino- 5 to15% of GGR	The duty is fairly low. 5% of the GGR for premium players with a deposit account of $100,000 or 15% of the GGR for all other players.
2	Bulgaria	• Online Casinos: 20% tax of revenue. • Land-based Casinos: $58,350 (BGN100,000) licensing fee + monthly fee per machine Sports betting, Lotteries, Bingo, and Keno: 15%	Land-based casinos are obliged by law to pay levies on each gambling machine as well as a licensing fee, while online gambling venues are taxed at a rate of 20% on revenue. Operators that run such forms of gambling establishments as Dog and Horse racing, Bingo, Keno, sports betting, and lotteries are subject to a 15% tax on the value of bets.
3	Italy	• Online Casinos: 25% of the GGR • Land-based sports betting: 20% of the GGR • Online sports betting: 24% of the GGR	According to the information revealed there, venues that offer online casino games to the Italians are charged a duty of 25% on all revenue. The land-based and online sports tax rate is 20% and 24% respectively.
4	UK.	• Land-based Casinos: 15% of the revenue, depending on the GGY of the premises • Online Casinos: 21% of the revenue • Lotteries: 12% of the turnover • Bingo: 10% of the profit	Gambling taxes in the United Kingdom are somewhat mild, giving virtually free rein to gambling operators. The toughest tax laws apply to land-based casinos, with a taxation of 15% on the revenue. From October 1, 2019, 21% duty on the revenue. Lotteries and Bingo are the least taxable forms of gambling, with a tax of 12% on the turnover and 10% on the profit respectively.
5	Czech Republic	• Casinos: 19% corporate tax + 35% of the profits • Sports betting: 19% corporate tax + 23% of the revenue	On January 1, 2017, the authorities introduced a new, stricter tax system; one which obliges casinos to pay a 35% duty on the revenue and 19% corporate tax. As far as betting on sports is concerned, the operators are charged a fee of 23% on the profits, along with 19% corporate tax.

6	Denmark	• Online Casinos: 20% duty of the GGR (gross gaming revenue)	The taxation on online casino is less severe, amounting to a 20% fee on the GGR.
7	Finland	• Casinos: 10% of the GGR + 30% of the given out winnings • Lotteries: 10% of the GGR + 30% of the given out winnings • Totalizator: 9.5% of the GGR	Casino and lottery operators are subject to a 10% tax on their Gross Gaming Revenue as well as they have to pay out 30% of the winnings given out to players.
8	USA	• Casinos: 20% (vary depending on the state) of the GGR	Average 20% of GGR
9	Spain	• Land-based/Online casinos: 20% of GGR Remote sports betting: 20%	The Spanish parliament has recently slashed taxes on numerous online games of chance, encouraging foreign operators to tap a new market. Since July 2018, the tax levied on remote casinos and bookmakers is a flat 20%, compared to the previous 25%. Taxation on brick and mortar casinos remained at a rate of 20%. When it comes to the Spanish, their winnings aren't subject to any fee.
10	Netherlands	• Online/Land-based Casinos: 30.1% of the GGR	Netherlands Tax Authority website (belastingdienst.nl), doesn't provide data in English, while the information in Dutch is fairly ambiguous. As far as gambling operators are concerned, they are allegedly subject to a fee of 30.1% on their Gross Gaming Revenue.
11	Malta	A second Guideline clarifies how to calculate the VAT base for gaming services w.e.f. 1 January 2018. Essentially the considerations made are deemed to be the following:	Where the supplier receives a rake – the consideration shall be the rake; In all other cases, the consideration shall be total stakes/bets placed by the players (including bets placed using bonus credits) less the winnings and other amounts paid out to the players in connection with the bet (including bonus credit comprised within the bets placed). The consideration shall be deemed to be inclusive of VAT.
12	Macau	39% on GGR	Macau charges an effective tax rate of 39 percent on casino GGR – with 35 percent via direct government tax, and the remainder via a number of levies to pay for a range of community good causes.

Government of Goa
Office of the Hon'ble Minister for Transport, Panchayats, Industries, Trade and Commerce & Protocol and Hospitality
302, Ministerial Block, Third Floor, Secretariat, Porvorim, Goa- 403521
Tel. No.: 0832-2419534 Fax: 0832-2419837

No. MIC/TPI/GST/37/22/223 Date: 30/11/2022

To,
The Hon'ble Convenor,
Group of Ministers for Casino,
Race Courses and online Gaming

Sub: Submissions with respect of taxation of online skill gaming
Ref: Group of Ministers ('GOM') meeting held on 22nd November, 2022

Sir,

In reference to the Group of Ministers' meeting regarding Casinos, Race Courses and Online Gaming held on 22nd November, 2022 and in continuation of earlier letter dated 28/09/2022, this is to submit the comments/views on taxation of online gaming.

It is learned from the industry players that the online skill gaming platforms collect amount from players which is split as 'platform fee/service charges' and 'Contribution towards prize pool' and bifurcation of the amount collected is communicated to all the players through the 'Terms & Conditions' available on the Platform's website.

In this context it is noted that 'platform fee/service charges' charged for services provided by the platform company are taxed at 18% whereas the amount collected as 'Contribution towards prize pool' is treated as Supply not liable for levy of GST. The argument tendered in support of this is that the contribution made by the players for online game towards the prize pool constitutes an actionable claim other than lottery, betting and gambling as they are considered to be game of skill and not a game of chance. Thus, the said amount is explicitly covered at para 6 of schedule III of CGST Act and Goa SGST Act and therefore is not leviable to GST.

Therefore, it is to submit that view of the industry players seems rational and the 'platform fee/service charges' collected by online skill gaming platforms may be continued to be taxed at existing rate or as may be decided by the GST Council and amount collected as 'Contribution towards prize pool' may be treated as supply not liable for levy of GST at this point time.

Lastly, with respect to taxation of Betting on Horse Racing, it is to inform that services of betting on horse racing are not available in the State of Goa and therefore there are no comments to offer on the issue.

Yours faithfully,

[illegible signature]

(Mauvin H. Godinho)

Annexure-X

4th meeting of GoM on Casino, Race Courses & Online Gaming

Date: 05th Sept., 2022

Views of Gujarat:

(1) It is already decided to levy tax on face value @28% on lottery.

(2) Casino and horse racing are not in Gujarat. Therefore, we may not comment on it and will go by whatever Group of Ministers (GOM) to decide on it.

(3) **Distinct nature of on-line Gaming:**

On-line gaming is very different from other 3 forms i.e. Lottery, casino and horse racing. Here the discussion is for taxable value and rate of tax. Lottery, casino and horse racing are organized in physical form. It means people consuming these services have to go in-person to the place of service provider.

Whereas on-line gaming is virtual. For on-line gaming, supplier and recipient operate on virtual platform. **Therefore, the point of similarity should not be used to put all these 4 categories into one basket.**

One more distinction is that other 3 forms may use partially manual records and cash transactions, while for on-line gaming, there is only on-line transactions and therefore, 100% are recorded. Thus, all service transactions are recorded in on-line gaming, while for other 3 forms, there could be scope of some leakages. While in online gaming activity it is not possible to hide the transactions.

(4) **View on the value to be taxed:**

If we consider full value in case of on-line gaming, then the operators might move outside India and may start providing these on-line gaming from other favorable countries like Singapore, Hong Kong, Maldives etc. In such

circumstances, we will not have any control on these on-line gaming activities. **Therefore, we should consider only service charge (platform fee) for taxation purpose.**

(5) **Rate of tax:**

As far as rate of tax is to be considered, then it could be 28% as has been discussed in the earlier meeting. Other electronic services are taxed with the rate of 18% GST. Therefore, proper assessment shall be done and due care should be taken not to under charge or over charge either of these services.

(6) **Addressing the issue of distribution of tax:** GST is to be borne by the final consumer. Therefore, the SGST or state portion of IGST shall be settled with the respective State from where the player has consumed the services. It shall be mandatory for the player to register his local place (i.e. his destination) before the on-line game entry fee (platform fee) is paid. In such circumstances, SGST or State portion of IGST may be shared with the respective consuming states.

*****

Views of Meghalaya on taxability of transactions in Casino

I. As per the Report of GoM on Casinos, Race Courses and Online Gaming, which was presented to the GST Council in its 47th meeting on 29th June, 2022, the position taken by Meghalaya, along with other member States represented in the GoM was 28% of GST to be levied on full face value of the chips/coins purchased by a player and on the entry fee/consideration paid which compulsorily includes price of one or more supplies viz. food, beverages etc. However, optional supplies made independently of the entry ticket shall be taxed at the rates as applicable on such supplies.

II. After deliberations on the subject-matter of the GoM on Casinos, Race Courses and Online Gaming in its 47th meeting, the GST Council directed the GoM to re-visit the report, based on further inputs from the States.

III. For re-examination of the issues involved in these three sectors, GoM decided to hear out the industry representatives from the Casinos, Online Gaming and Race Courses through presentations and study visit to Bangalore and Goa for thorough understanding of the complexity of the nature and operations of these three disparate sectors.

IV. On careful examination of the information and records made available to the GoM by the Casino Industry in its presentations and the site-visit to the Casino, Meghalaya has taken the following view on the taxability of transactions in a casino:

1. In a casino, a variety of games are played. A player enters the casino where he pays an entry fee which may or may not include the charges for food and beverages. On entering, the player buys a certain value of chips, which entitle him the right to play at various tables.
2. Gaming tables in a casino may consist of player against player games or player against the house (casino) games.

3. It may be noted that the house is assured of gross revenue only if it simply acts as a facilitator for player against player gaming. In such a scenario, the house charges facilitation fee and that becomes the service provided by the house and technically, it should attract a GST rate of 18% on the facilitation fee charged by the house.

4. However, in a player against the house gaming, the house is never assured of revenue as in certain games, the house may suffer net loss. This may hold true for a limited number of tables and limited number of times in a day but at the end of the day chances are that the odds will even out and the house will have a positive revenue.
5. Presently, the casino industry is paying GST at 28% on the Gross gaming revenue (GGR), also called game yield. GGR is a key metric used by gambling and betting companies all over the world. It reflects the difference between the amount of money players wagered minus the amount that they win. **It is important to note that GGR is equivalent to "sales" or "revenue" – not "profit" or "earnings".**
6. There have been divergent views on the valuation for the purpose of levy of GST on casinos. One view is that the GST should be levied on the GGR and another view is that the GST should be levied on the stake money wagered.
7. In this context, it is important to note Section 15(1) of the CGST Act, which is reproduced below:

"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".

8. The proponents of the view that valuation should be on stake money wagered have cited the above provision of law and they have argued that the purchase of the chips entitles the purchaser to the

right to participate and the right to win, which are inseparable and entire consideration is paid for the chance to win, with no exclusion of prize money for the purpose of levy of tax, by supporting it with the ruling of the Hon'ble Supreme Court in Sunrise Associates Vs. Govt. of NCT of Delhi & Ors. and Skill Lotto Solutions Pvt Ltd Vrs Union of India, which are mainly in context of Lottery.

9. The basic difference between a lottery and gaming in a casino is that a lottery ticket entitles the purchaser the right to take part and the right to win in a single lottery but in a casino, the purchaser is entitled the right to take part in a number of games across a number of tables and the purchaser may not also take part in any game or may not use up all the chips purchased and may re-encash the remaining chips.

10. i) As seen during the site-visit to a casino in Goa, the players get chips worth of the cash rendered by them and not after deducting the GST portion from the cash rendered by them. For example, a player buying chips worth Rs. 1000/- will get chips worth Rs. 1000/- and not Rs. 780/-(rounded off) (treating Rs 1000/- as cum-tax value).

ii) It is difficult to determine the value of the chips wagered player-wise for the purpose of levy of GST as the player has options to play at multiple tables in a casino with the same chips bought, and with each win/loss at multiple tables, it is practically impossible to keep a track of the chips player-wise. Table-wise model of revenue cum tax is accepted world-wide and is practical to follow.

iii) There could be a scenario, where the house suffered a net loss on a particular table and going by the principle of taxing on amount wagered would tantamount to forcing the house to pay GST on negative revenue which will run contrary to common business practice where tax is paid on the taxable turnover which is always a positive figure. GST on stake money wagered will kill the industry as there is a possibility that the house may have to pay GST on losses it suffered.

(iv) A player may also choose to wager only a certain number of chips and may re-encash the un-wagered chips. In such a scenario, it would be practically impossible to refund the GST on the un-wagered chips when GST is already paid upfront on the full amount of chips. It becomes even more cumbersome to distinguish between the chips wagered and un-wagered ones, where player has winnings on different tables.

v) Levy of GST on stake money will reduce the number and the value of chips available to the purchaser which may be perceived as player-unfriendly and may drive the players to play in the grey market.

vi) The practice world-wide is to levy the tax on the GGR and there is no reason why it should be different for India.

11. In view of the reasons mentioned above, our views on taxability of various transactions in casino are concluded as under:

i) Highest rate of tax i.e. 28% should be levied on GGR, following the table-wise model of revenue, and not stake money wagered in casino.

ii) The chips won in the subsequent rounds should not be further subjected to tax as noted by the GoM in its first report, which is in consonance with proposal at clause (i) above.

iii) GST @ 28% should be levied on Entry Fee, which compulsorily includes price of one or more supplies bundled together viz. food, non-alcoholic beverages etc. However, optional supplies made independently of the entry fee shall be taxed at the rates as applicable on such supplies. Liquor served inside a casino should be taxed as per the VAT rate of respective State Government.

_____*****_____

Views/ Comments of Meghalaya of valuation for the purpose of levy of GST on Online Gaming and Race Courses

1. In the 47th GST Council Meeting held on 28th and 29th June 2022, the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming made the following recommendations:

   (a) Imposition of GST on the activities namely, casinos, race courses, online gaming and lottery should be uniform (in terms of rate and valuation).
   (b) For the purpose of levy of GST, no distinction should be made between those activities merely on the ground that an activity was a game of skill or of chance or both. GST may be levied at the rate of 28% on all activities namely Casinos, Race Courses and Online Gaming.
   (c) Valuation: In case of online gaming, the activities be taxed at 28% on the full value of the consideration, by whatever name such consideration might 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.
   (d) In case of Race Courses, GST may continue to be levied at the rate of 28% on the full value of bets pooled in the totalizator and placed with the bookmakers.
   (e) In case of Casinos, GST be applied at the rate of 28% on full face value of the chips/coins purchased from the casino by a player. 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.
2. In pursuance of direction given by the GST Council, the matter for the purpose of levy of GST on transactions/ activities related to casinos, race courses and online gaming is being reconsidered by the GoM. Meghalaya has already furnished its views on transactions related to casinos, for the purpose of levy of GST.
3. Interactions made with the industry representatives from race courses and online gaming highlighted that both horse racing and online gaming are games of skill and not games of chance and that it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e. actionable claims can be taxed under GST, only if they pertain to lottery, betting and gambling, duly substantiated and supported by various court rulings, which have held that games where there is preponderance of skill do not amount to gambling and that the betting and gambling have to be read together, i.e. tax can be levied only on betting on the game of chance and not on the game of skill.
4. The sum of money retained by the Online Gaming Operator or the Racing Club is not part of the actionable claim, hence can be taxed at the rate recommended by the GST Council as supply of services.
5. The amount apart from the retained money as mentioned above, is the amount of actionable claim and can be taxed only if it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e. actionable claims can be taxed under GST only if they pertain to lottery, betting, and gambling.

Annexure-XII

367

Dr. PALANIVEL THIAGA RAJAN
Hon'ble Minister for Finance and
Human Resources Management
Government of Tamil Nadu

Secretariat
Chennai - 600 009

Date: 28/09/22

CT&R(B1) Dept.,

D.O Letter No.2926631/B1/2022- 1 , dated 28.09.2022.

Dear Thiru Sangma,

Sub: GST – Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming .– Views of the State of Tamil Nadu conveyed – Regarding.

Ref: Office Memorandum S-31011/12/2021-DIR(NC)-DOR, Department of Revenue, Ministry of Finance, Government of India, dated 05.09.2022.

I invite your kind attention to the subject cited above.

2. As the Group of Ministers has been mandated to re-examine the issue by seeking further information, I put forth the views of Government of Tamil Nadu as under:

(i) If a clear cut view is taken that all three: casinos, horse-racing and online gaming, are actionable claims of betting and gambling as games of chance, the recommendations of the Group of Ministers placed before the GST Council in the 47th meeting held on 28th /29th June,2022 at Chandigarh are acceptable in toto.

(ii) In case a view is taken that horse-racing and online gaming are games of skill and not actionable claims of betting and gambling, taxing the Gross Gaming Revenue (GGR) at 28% should be adopted. However, the following procedure should be prescribed for the purpose of determining the taxable value:

a) There shall be a mechanism to segregate and split at inception, the receipts amount directly into 'operator account' and 'escrow account'. The online gaming

Dr. PALANIVEL THIAGA RAJAN
Hon'ble Minister for Finance and
Human Resources Management
Government of Tamil Nadu

Secretariat
Chennai - 600 009

Date:.....

company / Race Club shall divide the receipts into the said two accounts. The 'operator account' shall hold the Purveyor's portion of the money and the 'escrow account' shall hold the prize money for eventual payout.

b) All winnings shall be paid out of escrow account and need not be subjected to GST. However, all such payments will be subject to direct tax including TDS applicable at 30%.

3. Hence, I request that the above view points of the State of Tamil Nadu may be taken into consideration by the Group of Ministers on Casinos, Race Courses and Online Gaming and incorporated in its recommendations.

Yours Sincerely,

To

Shri Conrad K. Sangma,
Hon'ble Chief Minister,
State of Meghalaya and Convenor of
GoM on Casinos, Race Courses and Online Gaming,
Chief Minister's Office,
Meghalaya Secretariat,
Shillong-793001.

T. HARISH RAO
Minister for Finance,
Health, Medical & Family Welfare,
Government of Telangana,
Hyderabad.

Aranya Bhavan, 6th Floor,
Saifabad, Hyderabad.
Off: 040 - 23450872 (O)
040 - 23453220 (F)
Mobile No. : 9440471409
E-mail:harishrao1116@gmail.com

D.O.Lr.No.914/Min(Fin, HM & FW)/2022, Dt.27.09.2022

Respected Sir,

Sub: GST Council – Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming – Meeting held on 05th Sept, 2022 - Views of the State of Telangana being conveyed – Regarding.

*****

I invite your kind attention to the subject cited above. It may kindly be recalled that during the Group of Ministers meeting held on 05th September, 2022 on the subject of Casinos, Race courses and online gaming, it was agreed to send the views of each of the States in writing.

In this connection, I herewith put forth the views on behalf of the state of Telangana. It may kindly be recalled that the discussion on, whether the tax should be levied on the activities of horse racing, casinos and online gaming on the entire face value or on the value retained by the respective owners was stalled due to the lack of clarity on the aspect of whether the entire receipts or the face value can be classified as betting and gambling under actionable claims or not. This in turn was noticed to be dependent on whether the respective games are 'games of skill' or 'games of chance'. Therefore, it was decided to obtain a proper legal opinion on this aspect from the Learned Attorney General.

Hence, I wish to state that if the legal opinion rendered in this regard indicates clearly that if an activity can be classified as **betting and gambling** then the earlier recommendations made by this GoM, which were placed before the GST Council in its 47th meeting are acceptable in toto on the said activity.

Contd..2

T. HARISH RAO
Minister for Finance,
Health, Medical & Family Welfare,
Government of Telangana,
Hyderabad.

Aranya Bhavan, 6th Floor,
Saifabad, Hyderabad.
Off: 040 - 23450872 (O)
040 - 23453220 (F)
Mobile No. : 9440471409
E-mail:harishrao1116@gmail.com

However, in case the views expressed are otherwise, stating that the said activity does not fit into betting and gambling, tax may be levied at highest rate and value may be arrived by following the existing provisions of the GST Act.

In conclusion, I request that the above views of the State of Telangana may be taken on record by the Hon'ble Chairperson of the GoM on Casinos, Race Courses and Online Gaming before taking a final decision on the issue.

With regards

Yours sincerely,

(T.HARISH RAO)

To

Shri Conrad K. Sangma,
Hon'ble Chief Minister,
Government of Meghalaya &
Convenor of GoM on Casinos, Race Courses and Online Gaming,
Meghalaya State

Comments of Uttar Pradesh on Taxability on Horse Racing, Online Gaming and Casinos

Entry 34 of State List is 'Betting and gambling'; Thus the entry provides power to states to regulate the betting and gambling activity. Before the advent of GST, power to tax such events was entrusted to states under entry 62 of State List. GST was introduced by 101st Constitutional Amendment Act. Prior to this amendment entry 62 of State List was '62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.' Through the 101st Constitutional Amendment a new entry was substituted as, '62 Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.' Thus after advent of GST, States were stripped of the power to tax on betting and gambling activities and now they are only taxable under GST.

Entry 6 of schedule III exempts the actionable claims other than lottery, betting and gambling as being neither supply of goods nor supply of services. Thus in GST regime only lottery, betting and gambling can be taxed as actionable claims.

Furthermore under Section 2(52) the actionable claims has been defined under the definition of goods.

Taxation on actionable claims such as lottery, betting and gambling under GST has been a debatable and controversial issues. The various sectors operating activities which lie in category of taxable actionable claims under GST, contend that these activities does not lie under purview of betting and gambling. Hence though there are actionable claims but they can't be taxed under GST. Some of these sectors, their arguments and view of State of U.P. are as following-

A. HORSE RACING

In pre-GST regime horse races were taxable under different state taxation laws. The imposition of GST on horse racing is being challenged by race course operators. The main arguments by race course authorities and comments from Uttar Pradesh is as follows-

***Contention-1*-Horse racing is a game of skill and not a game of chance. As it does not lie in category of betting and gambling, hence not taxable under GST.**

Comments of Uttar Pradesh-

Though for a player who is participating in horse race it may be a game of skill but for a person who places a bet on the performance of former it is a game of chance.

In ***Yashpalsinh Rajendrasinh ... vs State Of Gujarat*** **(SPECIAL CRIMINAL APPLICATION NO. 767 of 2020) on 22 September, 2020 the Gujarat High Court held that-**

"*The game of dart is a game of skill. The person who is actually playing the dart game is playing game of skill but the persons who are side betting, for them the game will not be game of skill but it will be game of chance.*" (Para 9) .

Similarly Madras High Court in ***Public Prosecutor*** **v.** ***Veraj Lal Sheth,*****(AIR 1915 Mad 164)** explained the distinction as follows:-

" *The principal distinction between gaming and betting or wagering is thus immediately apparent; in gaming the stake is laid by the players upon a game, the result of which may depend to some extent upon the skill of the players, but in a bet or wager, the winning or losing of stake depends solely upon the happening of an uncertain event.*"

Thus from above decisions it is clear that Horse racing is a game of skill but betting on result of horse racing is a game of chance.

It has been contended by race course operators that the persons who places bets on horses have special knowledge about pedigree of horse, weight of horse, weight of jockey, statistics of winning etc. having special knowledge of this field is a necessary requirement which makes it a game of skill. The argument cannot be accepted due to following reasons-

i. The race course authorities conduct no test/examination to examine the skills of any person who places bets on horses.

ii. The entry to the race course does not need any special knowledge of any particular field related to horse racing, a common man having no knowledge or experience of horse racing can go to the race course and may place bet based on any feature/quality of the horse such as appearance, coat color, hairs etc. Thus practically the skill is not a pre-dominant part of betting on horse racing. Hence it lies in category of game of chance and its an example of pure wager.

***Contention-2*- In the cases of Chamarbaugwala & Ramchandran, the game is held to be a game of skill.**

In ***RMD Chamarbaugawala* v. *Union of India* (AIR 1957 SC 628)**

The Apex court relied on the 'skill test' to decide whether an activity is gambling or not. The court held that competitions which substantially involve skills are not gambling activities but are commercial activities, protected under Art. 19(1)(g).

***K.R. Lakshmanan* v. *State of Tamil Nadu & Anr.*(AIR 1968 SC 825.)**

In this case, the court was considering whether horseracing was a game of skill or chance. It observed that the outcome in a horse race depends on several factors like form, fitness and inherent capacity of the animal, the ability of the jockey, the weight carried and the distance of the race, which are all objective facts capable of being assessed by persons placing the bets. Thus, unlike lottery, the prediction of the result of the race is an outcome of knowledge, study and observation.

Comments of Uttar Pradesh-

It would be noteworthy to mention that ***RMD Chamarbaugawala*** case was related to Bombay Lotteries and Prize Competition Control and Tax Act of 1948 and ***K.R. Lakshmanan*** case was related to Madras City Police Act, 1888 so both of the cases are not relevant while deciding the capacity to levy tax on such events.

In **STATE OF KARNATAKA & ANR. ETC. VERSUS STATE OF MEGHALAYA & ANR. ETC. (CIVIL APPEAL NOS.10466-10476 OF 2011; 23rd MARCH, 2022)** it was held by **Supreme Court** that-

The expression 'betting and gambling' is relatable to an activity which is in the nature of 'betting and gambling'. Thus, all kinds and types of 'betting and gambling' fall within the subject of Entry 34 of List II. The expression 'betting and gambling' is thus a genus it includes several types or species of activities such as horse racing, wheeling and other local variations/ forms of 'betting and gambling' activity.

Thus from the above judgment it is clear that horse racing is an activity of gambling and hence betting on it is taxable under GST. This case is related with taxing power of state on such activities so it is more relevant than other cases which are basically related to prohibition on gambling and betting.

In ***State Of Andhra Pradesh vs K. Satyanarayana & Ors*** on 22 November, 1967 the Supreme Court held that-

Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home.

In horse racing a profit is made by totalisator from a game played for stakes hence it comes under the ambit of betting and gambling.

***Contention-3*- The amount which remains to totalistaor is value of supply so it is lawful to levy tax on only this amount. Taxation on face value is ultra-vires.**

Comments of Uttar Pradesh-

Section 15(5) of CGST empowers Government for determining the value of supply on the recommendations of the Council. The said section runs as follows-

(5) Notwithstanding anything contained in subsection (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.

Hence it is evident that Government may, on the recommendation of Council, may notify about the value of supply.

Under Rule 31A(3), the value of supply for horse racing is as follows-

(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.

Thus under existing legal provisions tax can be levied only on the amount paid into the totalisator.

The said rule was challenged in **Bangalore Turf Club Limited and ors. Vs. State of Karnataka(*WP No. 11168/2018 and WP No. 11167/2018 decided on June 02,2021)*** where the rule was struck down by single judge bench but the order in question was stayed by a double bench and currently the matter is *sub-judice*.

Hence in the present condition, the value of supply in case of horse racing is the amount paid to the totalisator.

Hon'ble Supreme Court in ***Skill Lotto Solutions Pvt Ltd Vs Union of India- 2020*** (43) G.S.T.L. 289 (S.C.) has confirmed the valuation rules in following manner :

"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."

Hence the taxation on face value of bet is justifiable.

Contention-4- **Tax on money to totalistaor will adversely affect the industry.**

Comments of Uttar Pradesh-There will be no adverse impact if the tax is charged on amount paid to the totalisator i.e. face value of the bet. In pre-GST era there were a number of taxes which were imposed on the face value of the bet. The description of these taxes are as follows-

-29% wtd.avg. entry tax and 15% service tax by centre
- in addition, tax on bet on the face value
- 15% service tax on tote commission
- 15% service tax on licence fee
- Embedded excise duty and other taxes.

Views of Uttar Pradesh (Conclusion)-

The betting on horse racing is not a game of skill but a game of chance and hence it lies under the category of betting and gambling. The pool money collected by totalisator is an actionable claim which validly declared as value of supply by Government on recommendation of Council. Even in Pre-GST era the basis of taxation was face valuethat should be continued in GST. There is no dispute as to rate of 28% on these activities so the same needs to be continued.

Imposition of tax on such activities is also recommended by Law Commission. In its **276th report, Law Commission** has commented in following manner-

" Actionable claims in the form of chance to win in betting, gambling, or horse racing in race club", being in the nature of services are also taxable under the new GST system, thereby ensuring that both, the States as well as the Centre earn revenue from the same."(Para5.33 pg. 57).

B. ONLINE GAMING

Online gaming is newly emerging and rapidly growing field. Following are the contentions from the industry and comments from State of Uttar Pradesh-

***Contention-1*-Online games are game of skill and hence they are not under the category of betting and gambling.**

Comments from Uttar Pradesh-

Online Gaming has elements of both Game of skill and Game of Chance. It is difficult to decide which of these two elements is in excess. This is a complete Game of chance for any new/inexperienced player.

The claim of gaming companies that online games are game of skill cannot be accepted for following reasons-

In ***M/s Gaussian Networks Private Limited v.Monica Lakhanpal and State of NCT-*** *It was held that playing skill based games for money in the virtual space, renders them illegal. The degree of skill that is involved in playing these games in physical form cannot under any circumstances be equated with games played online.*

In online games there is only one part of skill i.e. selection of players, which in all cases doesn't need substantial degree of skill so they are basically a game of chance in ***Galactus Funware Technology ... vs State Of Karnatka* (WRIT PETITION NO. 18703/2021) on 14 February, 2022** it was held by Hon'ble Karnataka High Court that -

Whether a game is, a 'game of chance' or a 'game of skill', is to be adjudged by applying the Predominance Test: a game involving substantial degree of skill, is not a game of chance, but is only a game of skill and that it does not cease to be one even when played with stakes. As a corollary of this, a game not involving substantial degree of skill, is not a game of skill but is only a game of chance and therefore falls within the scope of Entry 34 in the State List.

It is very difficult to define that whether a game is a game of skill or a game of chance. In ***M.J. Sivani And Ors vs State Of Karnataka And Ors* (Appeal (civil) 4564 of 1995)** on 17 April, 1995 it was held by Supreme Court-

" No game can be a game of skill alone. In any game in which even great skill is required, chance must play a certain part. Even a skilled player in a game of mere

skill may be lucky or unlucky, so that even in a game of mere skill chance must play its part. But it is not necessary to decide in terms of mathematical precision the relative proportion of chance or skill when deciding whether a game is a game of mere skill. When in a game the element of chance strongly preponderates, it cannot be a game of mere skill. Therefore, It is not practicable to decide whether a particular video game is a game of skill or of mixed skill and chance. It depends upon the facts, in each case. "

In ***State Of Andhra Pradesh vs K. Satyanarayana & Ors*** on 22 November, 1967 the Supreme Court held that-

Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home.

In online games a profit is made by game operator from a game played for stakes hence it comes under the ambit of betting and gambling and hence it is a game of chance.

Betting on another player's performance falls under the category of Betting, which is Game of chance. This principle was established by Gujarat High Court in **YashpalsinhRajendrasinh ... vs State Of Gujarat (SPECIAL CRIMINAL APPLICATION NO. 767 of 2020) on 22 September, 2020.**

***Contention-2*-There are following judicial decisions in which online gaming is held to be a game of skill.**

In the support of their claim for being a game of skill and hence not taxable under GST, the Online Gaming companies have cited the following judgments of different Courts across country-

- ***Shri Varun Gumber Vs. Union Territory of Chandigarh and others*** **(CWP No.7559 of 2017)** -

  The respondent company' s website and success in Dream 11's fantasy sports basically arises out of users exercise, superior knowledge judgment and attention. I am of the further view that the element of skill and predominant influence on the outcome of the Dream11 fantasy than any other incidents are and therefore, I do not have any hesitation in holding the any sports game to constitute the game of "mere skill" and not falling within the activity of gambling for the invocation of 1867 Act.

- ***Play Games 24 X 7 Private Limited vs State Of Kerala* (W.P.(C)Nos.7785, 7851, 7853 & 8440 of 2021) on 27 September, 2021**- *Online Rummy played either with stakes or without stakes remains to be a 'game of skill'.*
- ***Chandresh Sankhla S/O Jagdish ... vs The State Of Rajasthan* (Civil Writ Petition No. 6653/2019)** on 14 February, 2020 Rajasthan High Court- *Dream 11 is a game of skill.*
- ***Rahul Nandkumar Bhardwaj vs 4 The Director General Of Police* (W.P.Nos.18022, 18029, 18044, 19374, 19380 of 2020, 7354, 7356 and 13870 of 2021) on 25 February, 2021, Madras High Court-**

  "It is in such light that Betting and gambling in Entry 34 of the State List has to be seen, where betting cannot be divorced from gambling and treated as an additional field for the State to legislate on, apart from the betting involved in gambling. Since gambling is judicially defined, the betting that the State can legislate on has to be the betting pertaining to gambling; ergo, betting only on games of chance."

In the judgments mentioned by the Online Gaming organizations, there is no judgment regarding non-tax liability under GST in these activities. Most of the disputes pertain to whether or not these activities fall under the category of Gambling. Therefore, it is not appropriate to apply these *ratios* in respect of tax liability under GST.

The only case where the rule of "Game of skill or Game of chance" was applied for taxability was ***Gurdeep Singh Sachar v/s Union of India*- 2019 (30) G.S.T.L. 441 (Bom.) (Dream 11 case)** in which the Hon'ble Court held that the activities of the Dream11 (online gaming) will not fall under betting/ gambling but these activities are 'game of skill' and will be actionable claim as mentioned at Entry 6 of the Schedule III CGST Act, hence clearly 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 judgement and order passed by the Bombay High Court has been stayed by Hon'ble Supreme Court.

***Contention-3*- An online game operator only retains the amount i.e. platform fee, so the tax can only be imposed on such fees @ 18%.**

Comments from Uttar Pradesh-As stated above in online games there is very little part of skill on the part of a player. Being a game of chance it is taxable as betting and gambling.

Under section 15(5) of the GST Act, the government has the power to determine the value of supply after the recommendation of the Council with over riding clause (Non-obstente clause). Therefore, in the cases of online gaming, there is no legal impediment in levying pool money as the value of supply. The pool money which is contributed by the players is clearly an actionable claim on which under rule 31A tax may be imposed on face value of bet.

***Contention-4*- Legal opinion**

a. Online games are game of skill. Therefore, it does not come under the category of Betting and Gambling. **(Shri Deepak Mishra (Ex. CJI), Shri Harish Salve and Lakshmikumaran & Sreedharan)**

   Comments from Uttar Pradesh-

   Online Gaming has elements of both Game of skill and Game of chance. It is difficult to decide which of these two elements is in excess.

   As per the order given by the Hon'ble Gujarat High Court in the suit of **Yashpalsinh Rajendrasinh ... vs State Of Gujarat (SPECIAL CRIMINAL APPLICATION NO. 767 of 2020)** on 22 September, 2020 betting on the performance of a player is a Game of Chance.

   In **M.J. Sivani And Ors vs State Of Karnataka And Ors (Appeal (civil) 4564 of 1995)** on 17 April, 1995 it was held by Supreme Court it is not necessary to decide in terms of mathematical precision the relative proportion of chance or skill when deciding whether a game is a game of mere skill.

b. Although the amount at stake in online games is an actionable claim, online games do not come under the category of actionable claims taxable under GST, as they do not fall under the category of Betting and Gambling. (Shri Deepak Mishra (Ex. CJI)

Comments from Uttar Pradesh-

Although there may be elements of skill in tasks such as selection of players etc., but in a real game, the performance of the selected player is a future event over which the participant who is placing the bet has no control and the such participant has equal chances for both gain and loss. So in this way there is a wager/betting element in these games. Therefore, these games should be considered as a game of chance and the amount related to them is taxable due to being an actionable claim.

c. Only the Platform fee is received as consideration for the services provided by the online game operators. Hence, only this amount can be taxed under GST. **(Shri Deepak Mishra (Ex. CII), Shri Harish Salve and Lakshmikumaran & Sreedharan)**

Comments from Uttar Pradesh-

Under Section 15(5) of the GST Act, the government has the power to determine the value of supply after the recommendations of the Council, with the overriding clause (Non-obstente clause). Therefore, in the cases of Online Gaming, there is no legal impediment in levying pool money as the value of supply.

d. It is ultra-vires to tax those goods/services on which the power to levy tax has not been given by the Parliament. (Mr. Harish Salve)

Comments from Uttar Pradesh-

Under the GST Act, the power to levy tax on actionable claims like lottery, betting and gambling has been given by the Parliament to the states and the center.

Contention-5- **Taxation @ 28% on pool money will increase the effective rate of tax upto 1000% and hence positive gaming industry will be on verge of closure.**

Comments from Uttar Pradesh-

The online games have an element of addiction. The people addicted to the game will play at any cost.

- The online games have a considerable negative impact on society. The social evils of online games were cited by Hon'ble Madras High Court in ***D.Siluvai Venance vs State Rep. By*** **(Crl.OP.(MD)No.6568 of 2020)** in following manner -

"We should not lose sight of the fact that nowadays, almost in all the social media, youngsters are being attracted, to play such online games, by alluring with prize money. Gaming sites are also partaking a slice on the winning hand, as of a virtual gambling house. In fact, these online games lure the unemployed youth that they can earn money by playing these games ."

" To be noted, if these set of unemployed youth, who are also under frustration, if get trapped into these elements, may go to any level to meet their loss. The most dangerous thing for any Society is educated criminals. If a knowledgeable person turns out to be a criminal, it would be a havoc on the society. Nowadays, we are also witnessing Graduates involving in chain snatches and other dacoity cases."

Considering the negative impact on society these activities should be taxed at highest rate just like sin goods.

Views from Uttar Pradesh (Conclusion)-

In online games the activities such as collection of pool money, point allocation to the players, gradation of the players points so allocated, deciding the winner, distribution of prize money among the players are solely controlled by the game operator. There is no mechanism that can be devised by States for verification of such activities hence in interest of revenue tax on total pool money (which is aggregate of face value of bets placed) is the only source available for fixing as basis of taxation .

The online games are adversely affecting the youth and adolescents and they are committing heinous crimes in order to avail gaming facility. To save the youth and adolescents from its negative impact online game should be taxed at the highest rate of 28% available under current GST regime.

C. Casinos

Casinos are operating in Goa, Daman and Sikkim. There is no dispute that the casinos activities falls under category of betting and gambling also there is no dispute regarding rate of tax. The only dispute in this sector is that whether the tax should be charged on GGR basis or on face value of bet, or one time tax at the time of purchase of chips.

The main arguments by casinos operators and comments from Uttar Pradesh is as follows-

***Contention-1*- Tax should be imposed on basis of GGR.**

Comments from Uttar Pradesh-

Tax on GGR basis i.e. net receipt is not feasible under current legal framework of GST. If GGR is taxed, the revenue receipt will be very less.

***Example*-** Normally for a casino the GGR lies between 13-17% of total turnover ; taxing the GGR may result lesser revenue yield. A is a casino operator who receives Rs. 100 as total revenue and his GGR is Rs.17. Under current provisions his tax liability will be 28 Rs. (28% of 100) but if the tax is imposed on GGR the total tax in this case will Rs. 4.76 (28% of 17) which will be comparatively will be very low.

In GGR based tax it is possible that even after several cycle of supplies no revenue for Government may be generated. **In Sikkim, where the casinos are operational, has also opposed the taxation on GGR basis in following manner-**

"In GGR system, the tax payable becomes nil when the casino owner loses in total to the players. In this aspect the GGR system is not in parlance with the basic principle of levy. It does not generate tax despite of abundant supply and consumption of service in such case."

***Contention-2*-Taxation at the time of purchase of chips is not correct because at that point there is no actionable claim is generated, it is generated only when the chips are place at a table to place stake.**

Comments from Uttar Pradesh-

When a player arrives at casinos and purchases chips, along with the chips he also purchases two rights; one-the right to participate and another is right to win which amounts to actionable claim. If a player after buying the chips does not participate in any game the tax paid by him on such purchases should not be refunded because first; the voluntary waiver of any right without any offer is not redressable under law and secondly; once the right to win is transferred it should be necessarily deemed to be consumed.

If a player after playing several games returns with the same amount of chips as purchased by him it will be impossible to trace that whether or not he has played a game on any table. Thus in such a case there will be a supply but no tax will accrued to the Government.

***Contention-3*- Only the net income generated from a table for casino should be taxed.**

Comments from Uttar Pradesh-

The proposition can't be accepted as if on any table after several cycles of game the casino loses ultimately then after several cycle of supplies there will be no revenue for Government as there is no net income from the table.

***Contention-4*-If tax is levied on each of cycle there will be no income to casinos.**

Comments from Uttar Pradesh-

In present legal framework under GST every time when a bet is placed on the table there will be a taxable supply. It is possible that a single payment of money may generate several cycles of game and accordingly the tax liability even there is no new income to the casino operator.

Considering this hardship before casino operators in previous report of GoM it was proposed that there should be one time tax on purchase of chips at the rate of 28%.

***Contention-5*- It is international practice to levy tax on GGR basis.**

Comments from Uttar Pradesh-

In the countries where the casino operators argue that in Casinos taxation on GGR basis is an International practice. But in many countries some additional taxes are levied beside GGR. In USA following taxes are levied on casinos beside tax based on GGR.

Taxes and license fees on casinos in USA-

- ✓ Annual tax +license fee
- ✓ Live entertainment tax
- ✓ Distributer license
- ✓ Manufacturer license
- ✓ Operator of slot machine route license
- ✓ Operator of mobile gaming System license
- ✓ Operator of information service license
- ✓ Disseminator license
- ✓ Interactive gaming license.

If 28% GST is levied on GGR basis then it will be the minimum tax rate in world on casino activities. The rate of tax on casinos in different countries is as following-

S.No.	Country	Rate of Tax
1	France	Horse Racing @37.7 % Casinos 83.5% of GGR
2	Germany	20-80% of GGR
3	Casinos	10-80% of GGR
4	Denmark	45—75% of GGR
5	Australia (Varies by state)	Upto 65% of GGR
6	U.S.A. (Varies by state)	51% of GGR
7	United Kingdom	15-50% depending on GGR
8	Austria	30% of GGR (for land based casino ,Online gambling is taxable @40%)
9	Macau	35% of GGR+1.6% Macau Foundation Tax+2.4% tax for infrastructure
10	Greece and Czech Republic	35% of GGR

***Contention-6*- Taxation on face value will adversely affect the industry and will ultimately lead its closure.**

Comments from Uttar Pradesh-

These games are played by upper state of society which is able to pay. The game is addictive in nature. There will no impact on business.

***Contention-7*- Casinos levy entry fees on its customers.**

Comments from Uttar Pradesh-

There is no new thing in charging tax on tax entry fees in casinos as services by way of admission to any recreational activity is already taxable under assesse 9996.

Views from Uttar Pradesh (Conclusion)-

Taxation is on basis of GGR neither practical nor legally feasible. So the previous recommendation of GoM to impose one-time tax at the rate of 28% is a practical solution.

Statements by others States-

1. **Tamilnadu**-States shall be allowed to levy tax on such activities.
   Comments from Uttar Pradesh-After 101st constitutional amendment the states have no power to levy tax on betting and gambling.
2. **Gujarat**- Reduce rate of tax on such activities.
   Comments from Uttar Pradesh- These activities are sin activities as they have adverse impact on society. So the rate of tax on such activities should be deliberately kept at highest rate of tax.

Concluding Remarks From Uttar Pradesh-

I. **The betting on horse racing** is not a game of skill but a game of chance and hence it lies under the category of betting and gambling. The pool money collected by totalisator is an actionable claim which validly declared as value of supply by Government on recommendation of Council. Even in Pre-GST era the basis of taxation was face valuethat should be continued in GST. There is no dispute as to rate of 28% on these activities so the same needs to be continued.

II. The contention that online games are game of skill and hence not taxable under GST is not sustainable they have elements of wager/betting so they are

game of chance. The online games are adversely affecting the youth and adolescents and they are committing heinous crimes in order to avail gaming facility. To save the youth and adolescents from its negative impact online game should be taxed at the highest rate of 28% available under current GST regime.

III. For casinos there is no dispute that it is a gambling activity and the rate of tax should be 28% so the same is needed to be continued. In casinos Taxation on basis of GGR is neither practical nor legally feasible. It needs to be reiterated that the tax to be imposed at 28% on the face value of chips sold and not on GGR of each table.

The Report of GoM on online gaming, horse racing and casinos etc. was submitted in 47th GST Council meeting held on 29-30 June 2022. After the presentation of report there are no new judgments either by Supreme Court or any High court so there is no substantial change either in legal position or in circumstances . So it is strongly recommended by Uttar Pradesh that the recommendations made by GoM in its first report need not to be changed .

COMMENTS OF WEST BENGAL ON LEVY OF TAX ON ONLINE GAMING, HORSE RACING AND CASINOS

A. Whether Online Gaming and Horse Racing should be considered as betting and gambling –

(i) The argument that horse racing and online gaming cannot be classified as 'betting and gambling', on the ground that they are games of 'skill' **is not correct**. The judgment of the Hon'ble SC in the matter of K R Lakshmanan(1996 AIR 1153) for horse racing was in respect of Madras City Police Act, 1988 and Madras Gaming Act, 1930 **and not in respect of any taxing Statute.** So bringing forward the same and highlighting that it is a game of skill is totally inappropriate.

(ii) Hon'ble Supreme Court in a recent judgment dated 23rd March, 2022 in the case of **State of Karnataka & Ors. Vs. State of Meghalaya & Ors. Etc**. while dealing with the interpretation to be given to the expression **'betting and gambling' in Entry 34** of the Seventh Schedule of the Constitution of India has held that

> "The expression 'betting and gambling' is relatable to an activity which is in the nature of 'betting and gambling'. Thus, all kinds and types of 'betting and gambling' fall within the subject of Entry 34 of List II. **The expression 'betting and gambling' is thus a genus it includes several types or species of activities such as horse racing, wheeling and other local variations/forms of 'betting and gambling' activity** ....."
>
> [Refer – 'Summary of Conclusions'; item (iii) Para 124 of the judgment]

(iii) Thus, horse racing is covered by this judgment within the expression of "betting and gambling". Now, it needs to be examined as to whether online gaming is also covered within it or not. In this regard we must note that, the Hon'ble Supreme Court has clearly stated that the said expression shall also cover **other local variations/forms of betting and gambling activity**.

(iv) We also need to bring in the concept of **common parlance test** in this regard, which is an established norm for deciding taxability of goods in any taxation statute. There are plethora of judgments of the apex and other courts on this aspect.

If a common man is asked as to what online gaming of the like of Dream 11 etc is all about, in all certainty he would answer without any hesitation that, whoever wants to make quick money goes for it. The advertisements which are made by these companies also highlight the prize money that one stands to gain if he comes to the platform and play it. What brings them together is the greed to make some quick or fast money. In this process, **while one**

<u>may make money, many others lose their money.</u> In reality, people jump into it without thinking of its consequences. 388

(v) We also need to apply the **doctrine of *"Ejusdem Generis"*** in this case which is a settled rule for interpretation of law. *"Ejusdem Generis"* literally means "of the same kind and nature". **There cannot be any ambiguity that the intent of the GST Laws is to levy tax on all kinds of actionable claims that falls under the class of lottery, betting and gambling** and with all certainty horse racing and online gaming comes under the genus of betting and gambling.

(vi) We must also recognize in this regard that, it is not only difficult but impossible to ascertain the accurate percentage of skill or percentage of chance that is involved in a particular online game and therefore it would be absolutely inappropriate to classify all kinds of online gaming as game of skill.

In fact, every online game has its element of chance. Hon'ble Supreme Court in its judgment dated 17th April, 1995 in the case of **M.J. Shivani And Ors. Vs State of Karnataka And Ors.**(1995(3) SCR 329) very significantly observed that,

> **"..... No game can be a game of skill alone. In any game in which even great skill is required, chance must play a certain part. Even a skilled player in a game of mere skill may be lucky or unlucky, so that even in a game of mere skill chance must play its part.....Ordinary common people who join the game can hardly be credited with skill for success in the game.** [Refer – Para 11 and 15 of the judgment]

Hon'ble Apex Court in the case State Of Andhra Pradesh vs K. Satyanarayana & Ors (1968 AIR 825) held that, if a game is placed for profit it cannot be considered as game of skill.

So, there cannot not be any *iota* of doubt that, online gaming falls within the ambit of 'betting and gambling'.

<u>Our Opinion</u> – Online Gaming and Horse Racing is covered by the expression 'betting and gambling'

B. What should be the principle of valuation in respect of Online Gaming, Horse Racing and Casinos – 389

(i) Under the GST law "goods" includes actionable claims. But, while deciding to tax such claims all other actionable claims excepting lottery, betting and gambling were consciously excluded. So actionable claims which classify today as taxable goods are lottery, betting and gambling.

(ii) Now as far as lottery is concerned, it is taxable on full value and the principle of valuation as laid down in Rule 31A of the GST Rules has already been upheld by the Apex court in the case of Skill Lotto Solutions Private Ltd. vs. Union of India and Ors. dated 3rd December, 2020. **The principle of valuation in Rule 31A of the GST Rules, covers not only lottery but also horse racing and betting and gambling.**

(iii) Now, whether it is lottery, Casino, horse racing or online gaming **all comes under the same category that is covered by the expression "betting and gambling"**. Now to say that **prize money in respect of any one, which is also an actionable claim is to be exempted,** may be to the extent of 50% or for that matter any percentage, **would be absolutely wrong** and would send an extremely negative message to the people at large.

(iv) Prevalent incidences of tax in other countries are often cited in this regard to argue that, tax should be levied only on the prize money or the platform fee or the Gross Gaming Revenue (GGR) and not on the entire consideration.

The observation of the Hon'ble Apex Court in the case of **Skill Lotto Solutions Private Ltd. vs. Union of India and Ors.** dated 3rd December, 2020 is relevant in this regard wherein the Hon'ble Court observed that,

> **".....When the levy of GST, determination of taxable value are governed by the Parliamentary Act in this country, we are of the view that legislative scheme of other countries may not be relevant .....The taxing policy and the taxing statute of various countries are different which are in accordance with taxing regime suitable and applicable in different countries....."** [Refer – Para 81 of the judgment]

Accordingly, we must appreciate that **every country is different and has different priorities.** There can be no reason as to why we should look at international practices selectively in this case when we do not resort to the same while levying tax on other goods and services. No country taxes cement @28% but, we do. In various countries, these companies make social contributions but in our country the taxation regime is simple and we levy one single tax. Furthermore, revenue figures of some of these companies have shown substantial growth in the recent past even with the existing scheme of taxation.

For example, Revenue for the first quarter of 2022 – 23 of Delta Corp, one of the biggest casino companies, has witnessed a jump of 62.48% over the average quarterly revenue of the previous year [Source: https://groww.in/stocks/delta-corp-ltd]. 390

Hence, there cannot be any reason for not levying tax on the entire consideration received whether be it Online Gaming or Horse Racing or Casinos.

(v) It may also be noted that, lottery was earlier taxed at two different rates. While 12% was the rate for State owned Lotteries, 28% was there for Lotteries of other States. Even when the Ld. AG had opined that two rates can continue for Lotteries, the GST Council after several rounds of discussions concluded that, we cannot have two rates for one category of goods. The matter finally was put to vote and it was eventually decided in the 38th meeting of the GST Council that there shall be only one rate for lotteries and w.e.f. 01.03.2020, the rate became 28%. So when this is the settled stand of the Council, there cannot be any reason to deviate from it and **uniform valuation principles and rate for all such activities considered as "actionable claim" must be adopted.**

Moreover, the doctrine of *"Ejusdem Generis"* does not also permit us to extend any separate treatment to any of these activities than what has been extended in case of lottery.

(vi) **While we want to tax goods like food grains and other items of daily use at its full value, exemption from tax to a category of goods which people in common parlance consider as "sin activity" can in no way be appropriate.** We can never ignore the disturbing effect of online gaming on our children. These worrying effects include cranky behaviour, loss of appetite, rejection of outdoor life, reluctance to socialise, eye problems, studies being affected and obesity, among others. In some instances, children even turned to crime to fulfill their craving for games.

(vii) Owners of online gaming today may be paying on platform fee considering the matter sub-judice and similar demand may be placed in respect of Horse Racing and Casinos but we must settle the matter straight away, if required, by way of amending the GST Act (i.e. Schedule III) and the valuation rules to put it to rest. **It would be absolutely inappropriate to give any kind of concession in tax to these 'sin goods' when on the other hand we have levied tax on full value of food items.**

<u>Our Opinion</u> – We should stick to the original stand of the GoM and reaffirm that all these activities whether online gaming or horse racing or Casinos, should be taxed at full value and at the rate of tax of 28% only.

****