



Agenda for 52nd GST Council Meeting

07th October, 2023

Volume-I



GST Council Secretariat New Delhi

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
25th September, 2023

OFFICE MEMORANDUM

Subject: Notice for the 52nd Meeting of the GST Council scheduled to be held on 7th October, 2023.

The undersigned is directed to refer to the subject stated above and to convey that the 52nd Meeting of the GST Council will be held on **7th October, 2023** at Delhi. The schedule of the Meeting is as follows:

- **Saturday, 7th October, 2023 : 10:00 A.M. onwards**

2. In addition, an Officers' Meeting will be held on 6th October, 2023 at NDMC Convention Centre, Sansad Marg, New Delhi as per the following schedule:

- **Friday, 6th October, 2023 : 02:30 P.M. onwards**

3. The agenda items and other details for the 52nd Meeting of the GST Council will be communicated in due course of time.

4. Kindly convey the invitation to the Hon'ble Member of the GST Council to attend the 52nd 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. CEO, GST Network

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

Agenda Item 1(i): Confirmation of the Minutes of the 50th GST Council Meeting held on 11th July, 2023

The 50th meeting of the GST Council was held on 11th July, 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 50th meeting of the GST Council:

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1.	Confirmation of Minutes of 49 th GST Council Meeting held on 18 th February, 2023
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3.	Issues recommended by the Law Committee for the consideration of the GST Council
	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.
	ii. Capacity based taxation and Special Composition Scheme in certain Sectors in GST.
	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
	iv. Issues pertaining to interpretation of Section 10 of IGST Act, 2017
	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
	vi. Clarification on refund related issues
	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 31.12.2021
	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
	ix. Procedure for Recovery of Tax and Interest in terms of Rule 88C(3)

	x. Annual Returns for FY 2022-23
	xi. Amendment in CGST Rules, 2017 regarding registration
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	xii. Clarification on TCS liability under Sec 52 of the CGST Act, 2017, in case of multiple E-commerce Operators (ECOs) in one transaction
	xiii. Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period
	xiv. Amendments in CGST Rules consequent to amendment in CGST Act vide Finance Act 2023
	xv. Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2019
	xvi. Seeking clarity on taxability of share capital held in subsidiary company by the parent company
	xvii. Amendment in CGST Rules, 2017
	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.
	xix. Issues pertaining to ISD mechanism and taxability of services provided by one distinct person to another distinct person
4.	Recommendations of the Fitment Committee for the consideration of the GST Council
	a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to goods – Annexure-I
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5.	Second Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming
6.	Recommendations of the 18 th & 19 th IT Grievance Redressal Committee for approval/decision of the GST Council

	a. Decisions/recommendations of the 18 th meeting of the ITGRC
	b. Decisions/recommendations of the 19 th meeting of the ITGRC
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
8.	Ad-hoc Exemptions Orders issued under Section 25(2) of the Customs Act, 1962 to be placed before the GST Council for information.
9.	Report of 3rd Meeting of the Group of Ministers (GoM) on GST System Reforms
10.	Proposal for creation of State Co-ordination Committee comprising of the GST authorities from the State and the Central Tax Administrations
11.	Implementation of GSTAT consequent to passing of Finance Act, 2023
11. (Addendum)	Addendum to Annexure-A of the Agenda item 11
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-Profitteering (DGAP) for 3rd quarter and 4th quarter of the F.Y 2022-23.
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
14.	Review of revenue position under Goods and Services Tax
15.	Any other agenda with the permission of the Chair

1.3 The Secretary to the GST Council, welcomed all the Hon'ble Members of the Council and participating officers to the landmark 50th meeting of the GST Council.

1.4 The Secretary on behalf of the Council welcomed the following incoming Hon'ble Members to the 50th Meeting of the GST Council-

- a. **Ms. Atishi Marlena, Finance Minister, Delhi**
- b. **Shri Krishna Byre Gowda, Minister for Revenue Department, Karnataka**
- c. **Sh. Sudhir Mungantiwar, Hon'ble Minister of Forests, Maharashtra**
- d. **Shri A. T. Mondal, Cabinet Minister, Community and Rural Development, Power and Taxation Departments, Meghalaya**
- e. **Shri K. G. Kenye, Minister for Power and Parliament Affairs, Nagaland**
- f. **Shri Bikram Keshari Arukha, Minister for Finance, Odisha**
- g. **Shri Thangam Thennarasu, Minister for Finance and Human Resource Management, Tamil Nadu**

1.5 The Secretary informed the Council that a short film titled ‘GST Council: 50 steps towards a journey’ has been prepared by GST Council Secretariat in collaboration with Directorate General of Taxpayer Services, CBIC. The film was screened with the permission of the Hon’ble Chairperson. The Secretary informed that the film has been prepared in Hindi, English and various regional languages.

1.6 Further, the first set of a special postal cover and customized my stamp designed by the GST Council Secretariat through Department of Posts was presented by Smt. Manju Kumar, Chief Post Master General (CPMG), Delhi to the Hon’ble Chairperson of the GST Council to mark the occasion. All Hon’ble Members joined the release ceremony. The Secretary thanked the CPMG, Delhi and her team.

1.7 The Secretary stated that a GoM on Casinos, Race Courses and Online Gaming was formed to examine the issue of valuation of services and related aspects with Sh. Conrad Sangma, Hon’ble Chief Minister, Meghalaya as Convenor and Hon’ble Members from Maharashtra, West Bengal, Gujarat, Goa, Tamil Nadu, Uttar Pradesh and Telangana as Members. The GoM had submitted its 2nd report which was being placed before the Council for deliberations. He thanked all the Hon’ble Members of this GoM for their valuable recommendations.

1.8 The Secretary further stated that the GoM on GST System Reforms had submitted the report of its third meeting which was being placed before the Council for deliberations. He thanked the Hon’ble Convenor of this GoM from Maharashtra and other Hon’ble Members of this GoM from Haryana, Delhi, Assam, Andhra Pradesh, Odisha, Tamil Nadu and Chhattisgarh.

1.9 The Secretary informed the Council that a National Coordination Meeting was held on 24th April, 2023 with the officers from Center, States, Union Territories, GST Council Secretariat and GSTN wherein various issues on greater coordination on GST administration and sharing of best practices by both Center and states were discussed. The agenda of this meeting involved greater use of technology for GST compliance and tackling tax evasion. One of the outcomes of this meeting was All India drive against fake registrations from 16th May, 2023 to 15th July, 2023. The coordinated effort from both Central and State GST administrations had yielded excellent results. He appreciated the outstanding efforts and excellent performance of both the State and Central GST officers.

1.10 The Secretary also appreciated the efforts of the State and Central GST administrations in revenue augmentation as the revenue in first quarter of 2023-24 was 12 % higher than the revenue in same period for 2022-23.

1.11 The Secretary informed that the agenda for the 50th meeting of the GST Council was discussed in detail during the Officers Meeting a day before which would help immensely in steering the agenda today.

1.12 The Secretary sought the permission of the chair to begin deliberations on each agenda item.

2. Agenda Item 1: Confirmation of the Minutes of the 49th Meeting of the GST Council

2.1 The first agenda item pertained to confirmation of the minutes of the 49th Meeting of the GST Council which was held on 18th February, 2023 at New Delhi. The Secretary stated that the minutes were circulated to all Hon’ble Members and suggestions were received from States of Haryana and Tamil Nadu. The minutes of the 49th meeting of the GST Council after incorporating the changes suggested by the States were placed before the Council for confirmation.

2.2 The Hon'ble Member from Tamil Nadu stated that the suggestions made by the former Finance Minister of Tamil Nadu during the last meeting have not been incorporated. In regard to selection of Technical Members for GSTAT Benches, the States should be taken into account keeping in view the spirit of federalism. The State Search-cum-Selection Committee should be empowered to select both the Judicial Members and Technical Members of the State Bench. The present system will pose a herculean task for the Centre. The Secretary clarified that the agenda item was discussed in detail, and it was agreed that a draft would be prepared by the Secretariat and circulated. The Chairperson was authorized to take a final view. The minutes have been recorded accordingly. Action was also taken accordingly – a draft law was prepared, it was circulated, comments received and incorporated and then approval of the Chairperson taken. The final draft Act has also been circulated to States, based on which they have taken actions such as passing the State Act. The Hon'ble Member from the State of Tamil Nadu reiterated that the State Search-cum-Selection Committee should be empowered for selection of both the Judicial Members and Technical Members of the State Bench. The Secretary stated that the same would be recorded. He requested that minutes be approved.

Decision: The Council adopted the Minutes of the 49th meeting of the GST Council.

3. 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

3.1 The Secretary took up the next agenda pertaining to the Ratification of the Notifications, Circulars and Orders issued by the GST Council and decisions of GST Implementation Committee for the information of the Council (Page 92-104 of the agenda). He stated that this agenda was discussed in the officers meeting held yesterday and there was consensus. He requested the Council to ratify the Notifications, Circulars and Orders issued by the GST Council and take note of the decisions of the GST Implementation Committee (GIC).

Decision: The Council ratified the Notifications, Circulars and Orders issued by the GST Council and took note of the decisions of GST Implementation Committee.

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

4.1 The Secretary took up the next Agenda for the consideration of the GST Council. He informed that these agendas were discussed in the Officers' Meeting held on 10th July, 2023 and there was an agreement among the all officers on most of the issues. Then, the Principal Commissioner, GST Policy Wing made the detailed presentation (attached as **Annexure-3**) giving overview of the recommendations made by the Law Committee, as well as the gist of the discussions held in the Officers' meeting on 10th July 2023.

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

4.2 Pr. Commissioner, GST Policy informed that the as per the recommendation of GoM regarding amendment in Rules for implementation of E-Way Bill requirement for movement of Gold/Precious stones, Law Committee has recommended insertion of Rule 138F in the CGST Rules 2017 as well as in SGST Rules, 2017 for those States who want to mandate the requirement of e-way bill for intra-state

Movement of gold and precious stones under Chapter 71 as specified at Sl. No. 4 and 5 of the Annexure appended to sub rule 14 of Rule 138. He also mentioned that this was agreed to in the Officers' meeting.

Decision: The Council agreed with the recommendations of the Law Committee along with the proposed amendments in CGST Rules, 2017 and in concerned SGST Rules, 2017.

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

4.3 Pr. Commissioner, GST Policy informed that for implementation of the recommendations made by GoM on Capacity based taxation and Special Composition Scheme in certain Sectors, Law Committee has proposed to notify special procedure under section 148 of the CGST Act, 2017 to be followed by the manufacturers of commodities recommended by GoM for registration of the machines, maintenance of records of inputs and production, and submission of special monthly statement. Law Committee has also recommended insertion of Section 122A in CGST Act, 2017 to provide for penalty for non-declaration of machines by such manufacturers.

4.4 Law Committee further recommended that the amendment made to Section 16 of IGST Act, 2017 through the Section 123 of the Finance Act, 2021 may be notified for restricting the IGST Refund route in respect of certain supplies or suppliers for exports. Further, tobacco, pan masala and similar items (as recommended by GoM) and mentha oil may be notified under section 16(4) of IGST Act, 2017 as the goods, on the export of which IGST refund route will not be available.

4.5 He also mentioned that this was discussed in Officers' meeting and was agreed to. Officers also suggested 01.10.2023 as the date from which the provisions of Section 123 of the Finance Act, 2021 may be brought into effect.

Decision: The Council agreed with the recommendations of the Law Committee detailed along with the proposed notification and amendments in CGST Act, 2017 and IGST Act, 2017 and recommended to bring the provisions of Section 123 of the Finance Act, 2021 into effect from 01.10.2023.

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

4.6 Pr. Commissioner, GST Policy informed that Law Committee has proposed a circular to clarify 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 Section 50(3) of the CGST Act, if during the time period starting from such availment and upto such reversal, the balance Input Tax Credit in the electronic credit ledger of IGST, CGST and SGST taken together, has not fallen below the amount of such wrongly availed credit. However, if the balance of the electronic credit ledger in IGST, SGST and CGST taken together falls below such wrongly availed IGST credit, then it would amount to utilisation of the wrongly availed IGST credit and will attract interest as per section 50(3) of the CGST Act read with Section 20 of the IGST Act and Rule 88B(3) of the CGST Rules. Law Committee has proposed to clarify the same through a circular.

Decision: The Council agreed with the recommendations of the Law Committee as detailed in the agenda along with the proposed Circular.

Agenda Item 3(iv) issues pertaining to interpretation of Section 10 of IGST Act, 2017

4.7 Pr. Commissioner, GST Policy informed that agenda pertains to clarification regarding the interpretation of Section 10 of the IGST Act for determining the Place of Supply (PoS) in case of goods purchased Over-the-Counter in one State and thereafter transported to another State by the recipient. The issue was discussed in the 37th GST Council Meeting but it was referred back to Law Committee for further deliberation. The Law Committee, after obtaining the opinion of the States, has proposed an amendment in Section 10 of IGST Act for supplies made to unregistered persons, broadly considering the destination-based principle. The recommendation was agreed to in the officer's meeting.

4.8 The Hon'ble Member from Tamil Nadu suggested that place of supply should be place of supplier citing examples of migrant workers and others who come to the State to purchase something and if they mention the address from where they are coming, then revenue will go to that State where these migrant workers and tourists come from, and hence their State would be deprived of the Revenue.

4.9 The Secretary mentioned that decision has to be taken by the Council. Migration happens either way and people travel in and out of the States. There are disputes about PoS in such over-the-counter supplies. He also informed that the issue came up especially with regard to automobile sector in which residents of a State may travel to another State to take advantage of lower registration charges and road tax, which vary from State to State. To resolve this issue, Law Committee has recommended a new formulation where the unregistered consumers could declare their address on the tax invoice, which would determine the PoS for the said supply. In cases of in-migration, the State may gain but in out-migration it would lose. It is a zero-sum gain. Other than for major goods like automobiles, consumers will not mention their address. So, overall, the losses and gains would not be substantial.

4.10 The Hon'ble Member from Himachal Pradesh thanked the Chairperson stating that the said amendment would benefit smaller States which have very limited resources and that consumer State would get the revenue as per the principle of destination-based taxation.

Decision: The Council agreed with the recommendations of the Law Committee along with proposed amendments.

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.

4.11 Pr. Commissioner, GST Policy informed that Law Committee has recommended to clarify through a circular that e-invoicing would be required in all such supplies made by the registered persons, whose turnover exceeds the prescribed threshold for generating e-invoices under Rule 48(4) of the CGST Rules, to the Government Departments or establishment/ Government agencies / local authorities/ PSUs who are registered solely for the purpose of tax deduction at Source under section 51 of the CGST Act, 2017. He added that this was agreed to in the Officers' meeting.

Decision: The Council agreed with the recommendations of the Law Committee along with proposed circular for clarification.

Agenda Item 3(vi) Clarification on refund related issues

4.12 Pr. Commissioner, GST Policy further stated that the next agenda is regarding clarification on various refund related issues.

4.13 **Issue no 1:** Refund of accumulated input tax credit (ITC) under Section 54(3) on the basis of that available as per FORM GSTR 2B.

4.14 Pr. Commissioner, GST Policy informed that since the availment of ITC has now been linked with FORM GSTR-2B w.e.f. 01.01.2022, Law Committee has recommended that the availability of refund under Section 54(3) of the CGST Act also needs to be restricted to those invoices which are reflected in FORM GSTR-2B for the concerned or earlier tax periods and on which ITC is available to the applicant. Corresponding amendments have been proposed in the Circular No 135/05/2020-GST dated 31.03.2020 and Circular No.139/09/2020-GST dated 10.06.2020 which would be applicable for refund claims for the tax period January, 2022 onwards.

Decision: The Council agreed with the recommendations of the Law Committee for issuing the said clarification.

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

4.16 Pr. Commissioner, GST Policy informed that Law Committee has recommended that in view of the omission of Section 42 of the CGST Act, amendment in Section 41 of the CGST Act and omission of Form GSTR-2 and GSTR-3 from the CGST Rules, 2017, para 7 of the Circular No 125/44/2019 dated 18.11.2019 and its Annexure A are required to be modified to omit the references to the said Section and Rules.

Decision: The Council agreed with the recommendations of the Law Committee for making necessary modifications in the above circular and the Annexure A to the said circular.

4.17 **Issue No3:** Clarification regarding determination of value of adjusted total turnover in the formula under Rule 89(4)-

4.18 Pr. Commissioner, GST Policy informed that Law Committee has recommended to clarify through the circular that consequent to the Explanation having been inserted in sub -rule (4) of rule 89 of the CGST Rules vide Notification No. 14/2022-CT dated 5.7.2022, the value of goods exports to be included in the calculation of the adjusted Total turnover shall be the same as per the said explanation.

Decision: The Council agreed with the recommendations of the Law Committee, along with the Circular.

4.19 **Issue No 4:** 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:

4.20 Pr. Commissioner, GST Policy informed that Law Committee has recommended that clarification be given regarding refund of accumulated input tax credit in cases of inverted duty structure in respect of items like fertilizers, where subsidy is given by the government. Law Committee has recommended that refund will be available in all such cases as long as there is some inversion of tax rate irrespective of the fact that accumulation of input tax credit may also be on account of taxable value of output supply being lower than the value of inputs because of subsidy. Law Committee also recommended that refund be calculated as per the formula prescribed under rule 89(5) of CGST Rules, 2017.

4.21 The Hon'ble Member from Karnataka stated that he had reservations on the recommendation of Law Committee on account of Law and adverse Revenue implications in the State. He further informed that matter is under litigation between their State and concerned companies. He insisted that since the matter is sub-judice, it would not be advisable to take the decision at this stage. He therefore suggested that Council may await the order of the Court on the issue as it would have huge revenue implication of around Rs 300-500 Crore for the State. However, if the Council strongly felt that a decision needs to

be taken on the issue, then the law could be required to be amended and it may not be clarified by issuance of a circular.

4.22 The Secretary suggested that the Council may either refer the matter back to Law Committee or it could be approved so that all authorities actually take a uniform view. He reiterated that it is only a recommendation for the Council to decide but things should not be kept pending for clarification.

4.23 The Hon'ble Chairperson, sought the opinion of the house on the suggestions made by Revenue Secretary

4.24 The Hon'ble Minister of Karnataka agreed to the proposition suggested by the Revenue Secretary.

4.25 The Hon'ble Member from Uttar Pradesh questioned the wisdom of taking a decision on a matter that is already sub-judice. Revenue Secretary informed that though the matter is sub-judice but since it is not stayed, the issue could be decided.

4.26 The Hon'ble Member from Goa mentioned that if the Council waits for the Court orders, then the matter would remain pending. He requested that the issue needs to be clarified at the earliest and therefore, may be referred back to the Law Committee.

4.27 The Hon'ble Member from Chhattisgarh did not agree to the recommendation of Law Committee and stressed that Law Committee should be advised to follow the spirit of legislature and not recommend anything contrary to the provisions of the Act.

4.28 The Hon'ble Member from Meghalaya stated that the reason of litigation is due to lack of clarity in the Law and therefore, Council should not wait for the decision of the Court. He added that the Council should interpret the law and if needed, the Act should be amended for bringing more clarity. He further agreed to the concern raised by Hon'ble Member from Goa.

4.29 The Hon'ble Chairperson directed that in all such cases, where there is lack of clarity in the law, the Law Committee should come up with clarificatory note in time to avoid matter going to the Courts.

Decision: The Council agreed that the issue may be referred back to the Law Committee for re-examination of the same based on the provisions of the law, and after taking inputs from State of Karnataka also.

4.30 **Issue No 5:** 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.

4.31 Pr. Commissioner, GST Policy explained that the issue pertains to giving the benefit of zero rating in cases where the goods are actually exported or the payment is realised in case of export of services, even if it is beyond the time frame prescribed under rule 96A(1) (a) or 96A(1)(b) of CGST Rules. Law Committee has recommended to clarify through the circular that in such cases, subsequent to the export of goods or realisation of payment in case of export of services, as the case may be, the said exporters would be entitled to refund of the tax paid earlier. The refund may be claimed under "excess payment of tax" and till that functionality is available on the portal, it may be under the category "Any Other". However, no refund of interest would be given in such cases.

Decision: The Council agreed with the recommendations of the Law Committee along with proposed circular as detailed in the agenda.

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 31.12.2022.

4.32 Pr. Commissioner, GST Policy informed that guidelines were issued on manner of reconciliation of the difference in ITC availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 2017-18 and 2018-2019 consequent to the decision of the Council in the 48th GST Council Meeting. However, after that, representations have been received for clarification to deal with the difference in 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. Since rule 36(4) of the CGST rules allowed additional credit to the tune of 20%, 10% and 5% of the eligible credit available in GSTR-2A during the period 9.10.19 to 31.12.19, 1.1.20 to 31.12.20 and 1.1.21 to 31.12.21 respectively, subject to payment of tax by the supplier, therefore, the guidelines are proposed by the Law Committee to be issued for manner of verification and reconciliation of the difference in ITC for the period 01.04.2019 to 31.12.2021 also. The guidelines recommended by the Law Committee in form of a circular were agreed to in the Officers' Meeting.

Decision: The Council agreed with the recommendations of the Law Committee along with proposed circular as detailed in the agenda.

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.

4.33 Pr. Commissioner, GST Policy informed that a mechanism is being devised which would allow system-based intimation to the taxpayer about the excess availment of ITC in FORM GSTR-3B vis-a-vis that reported in FORM GSTR-2B, above a particular threshold and with provision for self-compliance on the portal by the said taxpayer. Accordingly, certain amendments in Rules and Forms are required for devising such mechanism. He further, informed that Law Committee has recommended that Rule 88D may be inserted in the CGST Rules to give a system-based intimation to the registered person in those case where difference between the ITC availed as per Form GSTR-3B and that available as per Form GSTR-2B exceeds such amount and such percentage as may be recommended by the Council. In such cases, the registered person shall be directed to pay an amount equal to the said excess amount of ITC availed along with interest or to give a reasonable explanation and if neither of these is done, then the amount can be demanded under Section 73 or section 74. Further, a new clause (e) has been recommended to be inserted in sub-rule 59(6) of CGST Rules to block subsequent GSTR-1 or IFF, unless the said amount has been paid or the requisite explanation has been furnished.

4.34 Law Committee has also recommended to insert a new FORM GST DRC-01C in CGST Rules as required under sub-rule (1) of the proposed rule 88D.

4.35 Law Committee further recommended that to begin with, such intimation may be given in those cases to the concerned registered person under proposed rule 88D where the difference between the input tax credit availed in FORM GSTR-3B & that available as per FORM GSTR-2B is more than 20% as well as more than Rs. 25 lakhs.

4.36 Pr. Commissioner added that this was discussed in Officers' meeting and was agreed to.

4.37 The Hon'ble Member from Tamil Nadu suggested that only one criteria of more than Rs 25 lakh should be adopted. Revenue Secretary clarified that it is only the beginning and based on the experience, the threshold could be changed or reduced at later stage. Otherwise, it may cause massive disruption in the business.

The Council agreed with the recommendations of the Law Committee along with proposed rule and proposed FORM DRC-01C.

Agenda Item 3(ix): Procedure for Recovery of Tax and Interest in terms of Rule 88C(3).

4.38 Pr. Commissioner, GST Policy informed that in cases where the output tax liability reported in Form GSTR-1 exceeds the output tax liability reported in GSTR-3B and has been communicated to the taxpayer but the amount has either not been paid fully/partially or satisfactory explanation of the difference has not been given by the taxpayer, or where interest has not been paid by the taxpayer, then, a procedure has been recommended by the Law Committee in those cases for creation of the liability in Electronic Liability Ledger and for recovery of this differential amount by insertion of new rule 142B and a new Form DRC-01D. He added that in the Officers' meeting, officer from the State of Gujarat proposed that words "or interest" may be inserted in proposed sub-rule (3) of rule 142B after the words "tax", which was agreed to by the Officers.

Decision: The Council agreed with the recommendations of the Law Committee, with the amendment proposed by the State of Gujarat, along with proposed rules.

Agenda Item 3(x): Annual Returns for FY 2022-23

4.39 Pr. Commissioner, GST Policy informed that for filing Annual Return for FY 2022-23, last date of filing is 31.12.2023 and accordingly, FORM GSTR-9 and FORM GSTR-9C for FY 2022-23 need to be notified. Law Committee recommended that 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. Law Committee also recommended to insert separate rows for the newly introduced tax rate of 6% (for brick kilns) in table 9, 11 and Pt. V of FORM GSTR-9C. Law Committee further recommended that 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.

Decision: The Council agreed with the recommendations of the Law Committee, along with draft notification detailed in the agenda note.

Agenda 3 (xi)- Amendment in CGST Rules, 2017 regarding registration

4.40 Pr. Commissioner, GST Policy informed that the next agenda 3(xi) is regarding the amendments in CGST Rules 2017 pertaining to registration. He stated that a significant number of cases have been detected where unscrupulous elements have misutilized the facility of registration to take fake registration. He mentioned that Law Committee deliberated on the issue and has recommended amendments in various provisions of CGST Rules to strengthen the registration process in GST.

4.41 **Amendment in rule 10A:** Law Committee has proposed that rule 10A of CGST Rules may be amended to provide that the details of bank account may be required to be furnished within 30 days of the grant of the registration or before filing of statement of outwards supply under section 37 of CGST Act in FORM GSTR-1/ IFF, whichever is earlier.

4.42 **Amendment to sub-rule (2A) of rule 21A:** Further, Law Committee has proposed that amendment be made in Rule 21A(2A) to provide for system based suspension of the registration in respect of such registered persons who do not furnish details of valid bank account under rule 10A of CGST Rules within the time period prescribed in the said rule. It has also been recommended to provide for automatic revocation of suspension in such cases upon compliance with provisions of rule 10A.

4.43 **Amendment to sub-rule (6) of rule 59:** Law Committee has further recommended that clause (e) may be inserted in sub-rule (6) of rule 59 to provide that in cases where a registered person has not

furnished details of a valid bank account under rule 10A as per provisions of rule 10A, the said registered person may not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using IFF.

4.44 **Amendment in CGST Rules regarding physical verification of business premises:** The Law Committee also deliberated that the physical verification of business premises needs strengthening in high risk cases. The Law Committee recommended that the requirement of the presence of the applicant for physical verification of business premises may be done away with. Further, 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 proposed in the Agenda.

4.45 Pr. Commissioner added that this was discussed in Officers' meeting and was agreed to.

Decision: The Council agreed with the said recommendations of the Law Committee.

Agenda 3 xi(a)- Pilot Project for biometric-based Aadhaar authentication of registration applicants in Puducherry.

4.46 Pr. Commissioner, GST Policy informed that the agenda 3 xi(a) is also related to agenda 3(xi) pertaining to registration. He stated that Council had already agreed to have a biometric based Aadhaar authentication in high risk cases and pilot was approved for State of Gujarat. Puducherry has also requested to have a pilot for the same implemented in Puducherry. In this regard, approval is needed for issuing the following notifications:

- 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 will 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.

4.47 Further, it was 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.

4.48 The Hon'ble Member from Andhra Pradesh stated that they are also interested in taking up this pilot project, which was agreed. The Revenue Secretary agreed to the same.

4.49 Pr. Commissioner, GST Policy stated that amendments in rule 8(5), rule 9(1) and rule 9(2) of CGST Rules 2017 have been notified by the Centre and State of Gujarat, but other States are also required to notify the same so that mandatory physical verification can be conducted in high-risk category identified by the Common portal, despite having Aadhaar authenticated.

4.50 He added that this was discussed in Officers' meeting and was agreed to.

Decision: The Council agreed with the said recommendations made in the agenda as also to the request of Andhra Pradesh to include it in the pilot for biometric Aadhaar based authentication.

Agenda 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

4.51 Pr. Commissioner, GST Policy informed that the agenda 3(xii) is a circular for clarification regarding TCS liability in the cases involving multiple electronic commerce operator, especially in the case of Open Network Digital Commerce platform. The Law Committee 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.

4.52 He also added that an 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 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 to the agenda.

Decision: The Council agreed with the said recommendations of the Law Committee, along with the circular and notification.

Agenda 3 (xiii)- Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.

4.53 Pr. Commissioner, GST Policy informed that the agenda is regarding a clarification in respect of those cases where the manufacturer provides warranty replacement or repair services for some items during the warranty period without any additional consideration. Issues were raised whether in these cases, the supply of replacement parts is liable to tax or not or whether ITC is required to be reversed or not. Therefore, a clarification has been recommended by the Law Committee in form of a circular to cover various scenarios.

Decision: The Council agreed with the recommendation of the Law Committee to issue the clarificatory circular.

Agenda 3 (xiv)- Amendments in CGST Rules consequent to amendment in CGST Act vide Finance Act 2023

4.54 Pr. Commissioner, GST Policy Wing informed that this agenda is regarding amendment to CGST Rules subsequent to amendment in CGST Act carried out through Finance Act, 2023.

4.55 **Rule corresponding to the Explanation to section 17(3) of CGST Act, 2017:** The Law Committee 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 of the CGST rules.

4.56 **Amendment to rule 162 of CGST Rules 2017:** Subsection (2) of section 138 of CGST Act, 2017 provides for prescribing the amount for compounding various offences under CGST Act through

CGST Rules, 2017. Therefore, Law Committee has recommended that sub-rule 3A may be inserted in rule 162 of CGST Rules to prescribe compounding amount for various offences.

Consent Based Sharing of Information

4.57 To implement the provisions of the newly inserted section 158A of CGST Act, rules need to be framed and implemented. The Law Committee has recommended insertion of new Rule 163 in CGST Rules, 2017 for the purpose of consent-based sharing of data available on the common portal with other systems.

4.58 The Law Committee has also 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 the agenda note.

4.59 Pr. Commissioner, GST Policy further mentioned that Council needs to fix the date on which provisions of Finance Act, 2023 pertaining to GST will come into effect. He informed that the issue was deliberated in the Officers' meeting and it was suggested that 01.08.2023 may be fixed as the date on which provisions of the Finance Act, 2023 pertaining to GST Appellate Tribunal may be notified by the Centre at least, so that the work for setting up of Tribunals can be initiated at the earliest. Further, it was suggested in Officers' meeting that all other provisions of the Finance Act, 2023 may be notified with effect from 01.10.2023.

Decision: The Council agreed with the said recommendation of the Law Committee, along with the suggestions made in Officers' meeting regarding date from which provisions of Finance Act, 2023 will come into effect.

Agenda 3 (xv)- Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2019.

4.60 Pr. Commissioner, GST Policy informed that Agenda 3 (xv) is regarding Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2019. He informed that the draft rules as recommended by Law Committee are detailed in the agenda. He added that the issue was deliberated in detail in Officers' meeting, wherein officer from State of Maharashtra suggested that in sub rule 5 of proposed rule 3 of the said Rules, the word "as well as adjudicating" may be replaced by the word "and" and that Sr. No. 9 of Annexure-I of the said Rules may be deleted. The same was agreed by the Officers.

Decision: The Council agreed with the said recommendation of the Law Committee, along with the amendments suggested in the Officers' meeting.

Agenda 3 (xvi)- Seeking clarity on taxability of share capital held in subsidiary company by the parent company.

4.61 Pr. Commissioner, GST Policy stated that the Agenda is about clarity on the issue of taxability of share capital held in subsidiary company by the parent company. but the Law committee deliberated on the issue and has recommended to clarify through a circular that mere holding of the shares of subsidiary company by the holding company cannot be treated as supply of services by the holding company to the subsidiary company and cannot be taxed under GST accordingly.

4.62 The Hon'ble Members from Karnataka and Chhattisgarh requested to explain the proposal in greater detail.

4.63 Pr. Commissioner, GST Policy informed that the issue is regarding clarification as to whether holding of shares in a subsidiary company by the parent companies to be treated as supply of service under GST or not. Field formation are raising demand that the share capital held in subsidiary companies are covered under SAC code 997171 and accordingly leviable to GST. As securities are neither treated as goods nor treated as services, mere holding of shares of subsidiary company by the holding company cannot be treated as supply of services. However, there may be independent supply of other services by holding company to subsidiary company like providing a bank guarantee, etc.

4.64 The Hon'ble Member from Karnataka agreed to the recommendation. However, he felt that Law Committee should examine the issue of taxability of other activities/ services by holding company for subsidiary company. He further suggested that the circular may mention that 'other advantages or services will be looked into separately'.

4.65 The Hon'ble Members from Meghalaya and Uttar Pradesh stated that the proposal of the Law Committee is only clarifying that the mere holding of securities of a subsidiary company by holding company cannot be treated as supply of services and there is no ambiguity in it, and therefore, there is no need for any amendment in the said proposed circular.

4.66 The Hon'ble Chairperson concluded the discussion by advising that while the issue of other advantages and services may be looked into separately, mentioning the same in the circular may lead to further litigation.

Decision: The Council agreed with the said recommendation of the Law Committee along with the circular. Law Committee will further examine the issue w.r.t. other advantages and services provided by companies to its subsidiaries.

Agenda 3 (xvii)- Amendment in CGST Rules, 2017

4.67 Pr. Commissioner, GST Policy stated that the Agenda is about various amendments in CGST Rules. He added that that a number of these amendments are just procedural in nature for alignment with various provisions requiring change or omission.

4.68 Following amendments in CGST Rules have been proposed as detailed in the Agenda:

1. **Omission of clause (c) of Explanation (1) to Rule 43:** This is an amendment consequential to lapsing of an exemption.
2. **Amendment in proviso to rule 46(f):** Law Committee has recommended that proviso to rule 46(f) of CGST Rules may be amended to provide that the tax invoice may contain the name of the State of the recipient only and the name and address of the recipient along with its PIN code may not be mandatory to be declared on the tax invoice.
3. **Amendment in Rule 64 and FORM GSTR-5A:** Law Committee 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 in his return for tracking of payment of tax on RCM basis by registered taxpayers.
4. **Amendment in rule 89(1):** Law Committee recommended to align the wording of the third proviso of rule 89(1) with the Section 49(6) so that the casual taxpayer can file his refund claim for the balance remaining out of the advance tax paid which is in the nature of excess balance in electronic cash ledger only and which can be claimed as refund after filing of the last return.

5. **Amendment in Rule 89(2)(k)** to include refund of interest and other amounts as per the Section 54(8) in case of refund of excess payment of tax.
6. **Omission of 1st and 2nd proviso to sub-rule (2) of rule 96** as they do not serve any purpose after the amendments in CGST Act.
7. **Amendment in rule 108 and rule 109 of CGST Rules** to provide a facility for filing appeal manually in certain specified circumstances.
8. **Amendment in FORM GSTR-3A** for providing for notice for non-filing of Annual Return in FORM GSTR-9 or FORM GSTR9A.

4.69 Pr. Commissioner mentioned that the issue was deliberated in detail in Officers' meeting, wherein officer from State of Maharashtra suggested that in respect of amendment in rule 108 and 109 of CGST Rules, the words "or due to non-availability of the facility" may be deleted from the proposed provisos to rule 108(1) and 109(1). The same was agreed by the Officers.

4.70 The Hon'ble Member from Telangana mentioned that after the bifurcation of the State, because of wrong mention of place of supply, tax has been credited to other States. He gave the example of ICICI, in which Maharashtra has been wrongly credited Rs. 80 Crore. Therefore, some mechanism needs to be built to correct it. In 47th GST Council meeting, assurance was given to constitute a Committee of officers to resolve the issue and the same may be done. He also suggested that on wrong credit, adjustment should be made subsequently.

4.71 The Hon'ble Chairperson stated that because there was a decision taken in the 47th council meeting on the concern raised by Telangana, the officer's committee must table a report to the Council in the next meeting, highlighting challenges, possibility or impossibility of the implementation of the issue raised by Telangana.

Decision: The Council agreed with the said recommendation of the Law Committee, along with the amendment suggested in the Officers' meeting. Moreover, the issue raised by the Member, Telangana regarding wrong credit may be looked into as decided in the 47th GST Council meeting.

Agenda 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.

4.72 Pr. Commissioner, GST Policy stated that the agenda is regarding a special procedure to be provided in cases where Tran-1 and Tran 2 claims were filed in pursuance of direction given by Hon'ble Supreme Court during two months' window of 01.10.2022 to 30.11.2022. The Law Committee recommended to provide a special procedure under Section 148 of CGST Act for filing of appeals manually against the orders passed in accordance with Circular No. 182/14/2022-GST. 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 which was issued 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 has been formulated by the Law Committee and is detailed in the agenda.

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

Agenda 3 (xix)- Issues pertaining to ISD mechanism and taxability of services provided by one distinct person to another distinct person.

4.73 Pr. Commissioner, GST Policy stated the agenda concerns the ISD mechanism and taxability of services between distinct persons. This issue was earlier deliberated by the GST Council and was referred back to the Law Committee for further examination.

4.74 He informed that there are two aspects for consideration- regarding the common input services procured from third parties and the internally generated services. The Law Committee proposed to issue a circular to clarify the issue in respect of both of such cases.

4.75 The 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.

4.76 **For prospective periods:** 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.

4.77 **For internally generated services:** Law Committee 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.

4.78 Pr. Commissioner, GST Policy also stated that the Law Committee could not make any recommendation for taxability and valuation of internally generated services in cases where full input tax credit is not available to the recipient.

4.79 He mentioned that the issue was deliberated in detail in the Officers' meeting. The officers agreed with all the recommendations made by the Law Committee. However, in the Officers' meeting, discussions were also held on the issue of taxability of internally generated services in cases where full input tax credit was not available to the recipient. He mentioned that it was broadly discussed in the Officers' meeting to clarify in the circular that in respect of internally generated services, the cost of salary of employees involved in providing the said services, may not be required to be mandatorily

included while computing the taxable value of the supply of such services, in cases where full input tax credit is not available to the recipient. He sought approval of the Council for incorporation of the suggestion made in Officers' meeting in the draft circular recommended by the Law Committee.

4.80 The Hon'ble Member from Karnataka suggested that Law Committee may also consider the possibility of allowing taxpayers to apportion costs of supplies according to their discretion without making it overly burdensome. The aim is to facilitate compliance and avoid the need for meticulous breakdown and apportionment of every cost. He also added that there is a need for caution as this is liable for different interpretations and may give rise to disputes.

Decision: The Council agreed with the said recommendation of the Law Committee, along with the suggestion made in the Officers' meeting regarding taxability of internally generated services in cases where full input tax credit was not available to the recipient.

5. Agenda item 4: Recommendations of the Fitment Committee for the consideration of the GST Council

5.1 The Secretary introduced the agenda item relating to the recommendations of the Fitment Committee. These recommendations had been given in six (06) Annexures, the first three related to Goods and the other three related to Services. The first Annexure listed issues relating to goods where tax rate changes or clarifications were recommended; the second Annexure listed items related to Goods where no tax rate changes were recommended and the third Annexure listed items related to Goods where the issues were deferred by the Fitment Committee for further examination. The fourth Annexure listed the recommendations for making changes in GST rates or for issuing clarifications in relation to Services; the fifth Annexure listed the services where no tax rate changes were being recommended and the sixth Annexure where the issues were deferred by the Fitment Committee for further examination in relation to services.

5.2 The Secretary then asked the Joint Secretary, TRU, DoR to take the Council through the brief presentation on the recommendations of the Fitment Committee.

5.3 JS, TRU stated that a total of 35 issues in respect of goods were examined. Out of these, on 14 issues, recommendations were made for tax rate changes or issuance of clarifications, on 17 issues no tax rate change or status-quo was recommended and on 4 issues, the Fitment Committee has recommended deferring the issues for further examination. She further stated that a total of 16 issues in respect of services were examined, out of which, on 7 issues recommendations were made for tax rate changes or clarifications, on 3 issues, no tax rate changes or status-quo was recommended and on 6 issues the Fitment Committee had recommended deferring the issues for further examination. The presentation made by JS, TRU is attached as **Annexure-4**.

5.4 JS, TRU started with the agenda items pertaining to goods where change in rates or issuance of clarification (14 issues) had been recommended by the Fitment Committee (**Annexure-I**).

5.5 The first issue pertained to tax rate change on uncooked/unfried snack pellets manufactured through extrusion process where the 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. She further informed that the said issue was also discussed in detail in the Officer's Meeting on 10.07.2023 and no objections were raised.

Decision: The Council agreed with the recommendation of the Fitment Committee to reduce the tax rate on uncooked/unfried snack pellets manufactured through extrusion process by whatever name called from 18% to 5% and regularize the issue for the past period on ‘as is where is’ basis.

5.6 The Hon’ble Member from Delhi thanked the Council for the decision.

5.7 JS, TRU then presented the second issue pertaining to Fish Soluble Paste where Fitment Committee recommended that 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% and recommended to reduce GST rate on Fish Soluble Paste (2309) to 5%. Fitment Committee also recommended to regularize the matter for the past period on “as is basis” in view of genuine interpretational issues.

5.8 The Hon’ble Member from Goa thanked the Council for reducing the tax rate on Fish Soluble Paste. He further cited the judgment of Hon’ble High Court of Madras in the case of Jeneffa India vs GOI and informed that only the taxpayers of State of Tamil Nadu are getting benefit of exemption on Fish meal while the taxpayers of rest of the States are paying 18%. He added that the exchequer is incurring substantial loss of revenue because of this anomaly and requested GST Council to ensure a uniform levy. He also requested that the practice in the State of Karnataka may also be rechecked in this regard.

5.9 The Hon’ble Member from Tamil Nadu stated that if there is something by which exchequer is incurring loss of revenue then the State of Tamil Nadu will collect all the information about it and definitely act accordingly.

5.10 It was informed by JS, TRU that an appeal has been preferred against the said judgement. Hon’ble Member from Chattisgarh enquired whether a stay has been obtained and if not, then whether the option of exemption was still being exercised.

5.11 The Hon’ble Chairperson sought a report on the entire issue within a week’s time.

5.12 The Hon’ble Member from Goa thanked the Council for considering this issue.

Decision: The Council agreed with the recommendation of the Fitment Committee to reduce the tax rate on Fish Soluble Paste from 18% to 5% and regularize the issue for the past period on ‘as is where is’ basis.

5.13 JS, TRU then presented the third issue pertaining to IGST exemption on the cancer medicine Dinutuximab (Quarziba) used for treatment of Neuroblastoma when imported for personal use. She stated that during the officers’ meeting on 10.07.2023, one of the suggestions was to check from the Ministry of Health and Family Welfare whether the said medicine is manufactured in India and that it has been informed by the Ministry of Health and Family Welfare that it is not approved for manufacture in India and the country’s needs are met by import.

Decision: The Council agreed with the recommendation of the Fitment Committee to exempt IGST on Dinutuximab (Quarziba) when imported for personal use.

5.14 JS, TRU then presented the fourth issue pertaining to medicines and Food for Special Medical Purposes (FSMP) used in the treatment of rare diseases and informed that the Fitment Committee recommended to exempt IGST on such medicines 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 the existing conditions and when imported by Centre of Excellence or any person or institution on recommendation of any of the listed Centre of Excellence. She also informed the Council that post

Budget 2023-24, Basic Customs Duty (BCD) exemption has been given to drugs and Food for Special Medical Purposes (FSMP) when imported for personal use for treatment of rare diseases enlisted in the National Policy for Rare Diseases, 2021. 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)

Decision: The Council agreed with the recommendation of the Fitment Committee to exempt the 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.

5.15 JS, TRU then presented the fifth agenda pertaining to issuance of clarification about GST rate on Trauma, Spine and Arthroplasty implants falling under heading 9021, for the period prior to the 18.07.2022. She informed that earlier there were two entries @ 5% and 12% for similar goods under 9021, which was causing confusion. On the recommendations of 47th meeting of the GST Council, a GST rate of 5% was fixed on all goods falling under heading 9021 w.e.f. 18.07.2022.

5.16 Fitment Committee recommended to regularize the matter for the period prior to 18.07.2022 on “as is basis” provided tax had been paid @5% or 12% in view of genuine interpretational issues.

Decision: The Council agreed with the recommendation of the Fitment Committee w.r.t. rate on Trauma, Spine and Arthroplasty implants.

5.17 JS, TRU presented the sixth issue pertaining to request for clarification on raw cotton supplied by agriculturists to cooperatives. Fitment Committee recommended to clarify that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and attracts 5% GST under reverse charge mechanism since cooperatives are registered persons, and also recommended to regularize for the past periods on “as is basis” in view of genuine doubts regarding taxability. She also informed the Council that in the officers’ meeting no objections were raised on the recommendations of the Fitment Committee on this issue.

Decision: The Council agreed with the recommendations of the Fitment Committee w.r.t. raw cotton.

5.18 JS, TRU then presented the seventh issue pertaining to consequential changes after the new Foreign Trade Policy coming into force. She stated that the Foreign Trade Policy 2023 came into force with effect from 1st April, 2023 and that the changes mostly involved updating the references of relevant paragraphs in various Customs and IGST notifications. Fitment Committee recommended for consequential changes to be carried out in notifications which would be mostly technical in nature.

Decision: The Council agreed with the recommendation of the Fitment Committee w.r.t changes in view of the new FTP.

5.19 JS, TRU then presented the eighth issue pertaining to the issue clarification of applicable GST rate - on imitation zari thread to avoid ambiguity prevailing on the applicable rate of GST on such goods. Fitment Committee recommended to reduce GST rate to 5% on imitation zari thread or yarn known by any name in trade parlance and further recommended that the issue may be regularized for the past period on “as is where is” basis.

Decision: The Council agreed with the recommendation of the Fitment Committee w.r.t. imitation zari thread or yarn known by any name in trade parlance.

5.20 JS, TRU then presented the ninth issue pertaining to LD Slag where Fitment Committee recommended to reduce the tax rate from 18% to 5% considering that consumption of LD slag needs to be encouraged for better utilization of this waste and protection of environment and to bring parity with Blast Furnace Slag (BFS) and Fly Ash. JS, TRU stated that LD slag is a by-product of steel industry. She further informed that in the Officers meeting, officers from Orissa and Punjab had pointed out that the issue had also been discussed in 48th meeting of the GST Council wherein the recommendation for reduction of rate was not agreed to since ITC would be available to cement manufacturers. It was explained that LD slag is not preferred by the cement industry due to excess lime content and for uptake in cement industry they have to do further processing. Karnataka had also clarified that other by-products of steel already attract 5% and therefore on grounds of parity the rate might be considered for reduction. On other by-products too the rate was reduced on grounds of environmental concerns.

5.21 Hon'ble Member from Maharashtra pointed out that if there is no offtake, the issue of taxing at 18% has no meaning.

5.22 The Hon'ble Member from Orissa stated that the pre-GST incidence of tax on LD slag was 17.5% (12.5% central excise and 5% VAT). Present rate of 18% in line with pre GST tax incidence. He stated that the Fitment Committee had recommended status quo earlier which is in line with the decision taken by the Council to tax essential commodities at 5% and that other for other items the tax rate should be kept at 18%, and therefore this recommendation of the Fitment Committee is at variance with that adopted in 45th GSTCM. The Hon'ble Member from Odisha requested that the issue be referred back to the Fitment Committee and Odisha may be invited to give its views on the same.

5.23 The Hon'ble Member from Delhi enquired about the quantum of LD slag produced in the country versus the offtake, because the decision would be taken on that basis.

5.24 JS TRU stated that for 10 MT of steel production, 1.8 MT LD slag is produced, and since the National Steel Policy envisages 300 million tonnes of steel production by 2030, India will produce 99 million tonnes of BF slag and 54 MT of LD slag, that while steel industry will consume significant amount of BF slag, there would be few takers for LD slag at high GST rate, and dumping of LD slag will result in environmental hazard. She stated that the offtake is now 25%.

5.25 The Hon'ble Member from Karnataka stated that dis-incentivizing the usage of LD slag by keeping the GST rate at 18% would not be in the interest of the environment. He stated that if cement manufacturers use LD slag, whether the tax rate was 5% or 18%, benefit of ITC would be available to them and hence there would be no loss to the exchequer. Now, since the rate is at 18%, the road making industry is dis-incentivized from using LD slag. By lowering the rate to 5% if we can encourage some end usage of this product, it would be in the larger social and environmental interest.

5.26 The Hon'ble Member from Kerala stated that while there is a revenue angle, for example Odisha was producing LD slag and therefore their revenues might be affected, the environmental angle was equally an issue. So if the usage was in the cement industry, it might be okay but while promoting usage of LD slag in roads, environmental issue needs to be kept in mind. He further stated that in Kerala LD slag was not being used in construction of roads as they do not have steel industry but considering the

fact that 100 MT of LD slag was going to be produced in the future, whether it will create some other environmental issue if used in roads needs to be kept in mind.

5.27 The Hon'ble Chairperson stated that argument was to reduce the rate to incentivize the use of LD slag which would result in collateral benefits of be reducing the harmful effects of dumping this waste product.

5.28 The Hon'ble Member from Telangana stated that they were able to use 100% of fly ash produced in their State for bricks and for use in highway construction and no hazards were reported.

5.29 The Hon'ble Member from UP agreed to the levy of 5% GST on LD slag. Based on discussions, Hon'ble Member from Odisha also agreed to the levy of 5% GST on LD slag.

Decision: The Council agreed with the recommendation of the Fitment Committee w.r.t. LD slag.

5.30 JS, TRU presented the tenth issue pertaining to amend the exemption notification No.50/2017-Customs dated 30.06.2017. Fitment Committee recommended to update list 34 in Notification 50/2017-Customs so as to include RBL Bank and ICBC Bank and update list 34 as per the updated Appendix 4B of FTP-2023 subject to confirmation from DGEP and DGFT.

Decision: The Council agreed with the recommendation of the Fitment Committee to include RBL Bank and ICBC Bank.

5.31 JS, TRU presented the eleventh issue pertaining to applicability of compensation cess on utility vehicles such as MUV/XUV /MPV with length more than 4000 mm, engine capacity more than 1500 cc and ground clearance of 170 mm and above. She stated that during the discussion in the 48th meeting of GST Council held in December, 2022 on agenda item relating to issuance of clarification on compensation cess leviable on SUVs, Hon'ble Member from Haryana had suggested that compensation cess on other utility vehicles such as MUV might also be deliberated upon. The Council directed the Fitment Committee to examine the same. She stated that earlier, based on the recommendation of the 21st GST Council, 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 1500 cc and ground clearance 170 mm)". Fitment Committee has now 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 more than 1500 cc and ground clearance of 170 mm& above and further recommended to insert an explanation to clarify for the purposes of the said notification entry that "Ground Clearance" in entry 52B means Ground Clearance in un-laden condition.

5.32 Secretary, Haryana stated that around 40% of the SUVs are still falling under the 20% Cess slab and due to laden height condition, 2% Cess is being lost which amounts to a great loss of the revenue. He further added that there is a difference in the way the ground clearance is being calculated as per BIS standard and Fitment Committee recommendation and suggested to fix the cess at 22% for all SUVs.

5.33 JS, TRU informed that the State of Haryana had raised the issue in the meeting of the Fitment Committee. She stated that the suggestion to merge the entries 52A and 52B of Notification No.1/2017-Compensation Cess (rate) into one category to make Compensation Cess rate uniform at 22% would be taken up in the next Fitment Committee. She stated that this particular clarification as recommended by the Fitment Committee would cover some models of vehicles. More data is required to analyze the revenue impact of merging 20% and 22% cess slabs, as suggested by the State of Haryana.

5.34 The Hon'ble Chairperson requested Haryana to provide additional data to the Fitment Committee and for now the recommendation of the Fitment Committee may be accepted.

Decision: The Council agreed with the recommendation of the Fitment Committee and accordingly agreed to amend the entry 52B in the compensation cess notification to include all utility vehicles by whatever name called provided they meet the parameters of length exceeding 4000 mm, engine capacity exceeding 1500 cc and having ground clearance of 170 mm & above and to clarify by way of inserting an explanation that 'ground clearance' means ground clearance in unladen condition.

5.35 JS, TRU then presented the twelfth issue pertaining to Compensation Cess rate on Pan Masala chewing tobacco etc. JS, TRU informed that the levy of compensation cess on these products was converted from ad valorem tax to specific tax based levy linked to retail sale price (RSP) on such products to implement the recommendations made by the GST Council in its 49th meeting. She stated that they have been receiving representations about the challenges in determining the rate of compensation cess in cases where it is not legally required to declare the RSP. The Fitment Committee has therefore recommended to notify that the earlier ad valorem rate as was applicable on 31st March, 2023 for such goods by amending the said Notification in cases where it is not legally required to declare RSP.

5.36 The Hon'ble Chairperson asked Hon'ble Member from Uttar Pradesh if he is in agreement with the recommendations of the Fitment Committee as the particular issue was raised by State of Uttar Pradesh.

5.37 The Hon'ble Member from Uttar Pradesh stated in the affirmative.

5.38 The Hon'ble Member from Karnataka inquired about the value difference between the calculation of ad-valorem rate and a weighted average of the RSP.

5.39 JS, TRU informed that there is no difference in the rate as the ad valorem rates were converted to specific rates based the recommendations of the GoM.

5.40 Hon'ble Member from Karnataka expressed his apprehension that if there was a significant rate difference, it might create an arbitrage and provide an incentive to move from RSP based levy to an ad valorem rate.

5.41 The Secretary mentioned that there may be a difference and that is why in order to plug revenue leakages, the GoM had recommended the levy of cess on pan masala, chewing tobacco etc. be based on RSP instead of the earlier ad valorem based levy. He stated that there was a possibility that the whole value chain may not be captured for revenue purposes if we revert to the earlier system, but where there is no legal requirement to have a RSP, there is no other option other than go for ad valorem rate.

5.42 He stated that the concerns raised by Hon'ble Member from Karnataka could only be addressed by enforcement measures. The Hon'ble Member from Karnataka suggested that the *ad-valorem* levy could be made equal to the weighted RSP to prevent arbitrage.

Decision: The Council agreed with the above recommendation of the Fitment Committee w.r.t. compensation cess rate on tobacco products.

5.43 JS, TRU presented the thirteenth issue pertaining to desiccated coconut for the period 01.07.2017 to 27.07.2017. She stated that prior to 27.07.17 there was no specific entry for Desiccated Coconut and the taxpayers assumed that it was exempt. Representations had been received requesting to regularize the intervening period between issue of original notification and issue of corrigendum to notification 1/2017-CT(R) dated 27.7.2017 prescribing 12% GST rate. Fitment Committee recommended to regularize the period 01.07.2017 to 27.07.2017 on “as is where is” basis on account of genuine interpretational issues.

Decision: The Council agreed with the recommendation of the Fitment Committee w.r.t. desiccated coconut.

5.44 JS, TRU presented the fourteenth issue pertaining to Areca Leaf plates and cups. She stated cups and plates made of areca leaf are already exempt. Fitment Committee had examined it and suggested that no action is required on the representation received but during the officers’ meeting it was clarified that the request was not for exemption but for regularizing the period prior to the exemption i.e. prior to 1.10.2019, on “as is basis” and the same was discussed in the officers’ meeting and therefore, recommended for its regularization.

Decision: The Council agreed with the recommendation w.r.t. areca leaf plates and cups.

5.45 JS, TRU then presented the agenda pertaining to goods (17 issues) where no changes or status quo had been recommended by the Fitment Committee (**Annexure-II**).

5.46 She presented the first issue i.e, reduction of GST rate on Agro-based biomass pellets from 5% to Nil. She informed that Ministry of Power has requested for reduction of GST rate to Nil on solid bio-fuel pellets / Biomass briquettes or pellets on the basis that they have a mandate to use 5% for coal firing and also promote its uptake. She further stated that Fitment Committee had recommended status quo which 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. She said that Gujarat had suggested regularizing the issue relating to GST on biomass briquettes for the period from 1.7.2017 to 12.10.2017.

5.47 The Hon’ble Member from Punjab suggested that GST rate on Agro based biomass pellets may be reduced to Nil keeping in mind the environment issues as pollution is a huge problem in north India and many NGOs and Courts are also involved.

5.48 The Secretary noted that only Punjab appeared to be in favour of reducing the rate to Nil.

5.49 The Hon’ble Member from Uttar Pradesh informed that this issue is already discussed in earlier GST Council Meeting and Fitment Committee has also not recommended the same.

5.50 The Secretary informed that this product goes into the exempt sector that is production of electricity and therefore, exempting this would mean a loss of revenue to the government.

5.51 The Hon’ble Member from Delhi inquired about the quantum involved.

5.52 JS, TRU informed that as per Ministry of Power, demand of Agro-based biomass pellets has increased upto 1 lakh MT per day. However, the present capacity is 7000 to 8000 MT, so the request is

to increase its uptake. She further informed that since this product is primarily used in the electricity sector, it will amount to zero rating supply which is usually for export.

5.53 The Hon'ble Member of Delhi said that issue is similar to the LD slag issue and it is an environmental issue and suggested reducing the tax rate from 5% to Nil to increase the off take.

5.54 JS, TRU informed that there is a difference between LD slag and Agro-based biomass pellets where the first one is part of the GST chain while the latter one becomes a zero rated supply and goes out of the GST chain.

5.55 The Hon'ble Chairperson appreciated the point about environmental concerns but stated that zero rating is meant for exports as taxes are not exported. She stated that rate for LD slag was not being brought to zero and the recommendation was to tax it at 5%. Here also the tax rate suggested is 5%.

5.56 The Hon'ble Member from Punjab requested that issue may be referred back the issue to Fitment Committee.

5.57 The Hon'ble Chairperson appreciated the view of Member from Delhi and reiterated that zero rating supply is for exports. She informed that Fitment Committee suggested for 5% GST Rate for LD slag not Zero. Here too environment concerns a taken into account and the tax rate is being recommended to be fixed at 5%.

5.58 The Hon'ble Member from Uttar Pradesh stated that there has been no change in circumstances since the decision of the GST Council and therefore, the issue should not have been reopened.

5.59 JS TRU explained that based on VIP references/Ministry reference issues get reopened.

5.60 The Secretary suggested that an issue which is approved in the recent past should not be brought back to the Council until there are new facts or changed circumstances. He sought permission of the Chair and the approval of the Council to reply to such references about the decision taken and not bring the issue over and over again before the Council unless the material change in circumstances is brought on record. Chairperson agreed to the same.

Decision: The Council agreed with the recommendation of the Fitment Committee to maintain status quo on the rate and regularize the issue relating to biomass briquettes for the period 1.7.2017 to 12.10.2017 on "as is basis".

5.61 JS, TRU then presented the second issue regarding request for increase in GST rate of De-Oiled Rice Bran from Nil to 5%. She informed that recommendation had been received from the Department of Food and Public Distribution to impose 5% GST Rate on DORB. She informed that 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. 25.01.2018. The interim report of GoM on rate rationalization also did not recommend bringing all goods under chapter 23 to 5% GST Rate and hence Fitment Committee recommended for status-quo.

Decision: The Council agreed with the recommendation of the Fitment Committee to maintain status quo w.r.t. De-Oiled Rice Bran.

5.62 JS, TRU then presented the third issue pertaining to products falling under any chapter, prepared or manufactured by the inmates of Kerala Prison and Correctional Services Department. She informed that recommendation was received for Nil GST Rate. Fitment Committee recommended for status-quo.

5.63 The Hon'ble Member from Andhra Pradesh suggested that Council needs to look at the issue from different perspective and at such correctional facilities instead of hard labour now training on vocational skills is being imparted. Mostly three kinds of products are being supplied: cloth, bakery products and furniture/steel products and the amount in question is also very little. He stated that the request has been turned down on the apprehension that there might be revenue leakages. He requested that the exemption might be considered that the sale happens only through a few central prisons, each State having 4-5 such prisons. He requested to exclude such products from GST bearing in mind that these products need to be competitive in the market and that the inmates need to be imparted some skill so as to enable them to eke out their livelihood after leaving prison and keep themselves occupied while serving their time in jail.

5.64 State of Kerala supported the view of Andhra Pradesh.

5.65 The Hon'ble Member from Maharashtra was of the view that there were other ways to support such goods such as making mandatory procurement of such goods by Government departments and did not support tax concession.

Decision: The Council agreed with the recommendation of the Fitment Committee to maintain status quo w.r.t. proposal pertaining to Kerala Prison and correctional Services Department.

5.66 JS, TRU stated that the next issue pertained to bio-fertilizers and other such organic inputs and the issue of rate reduction on the same had already been examined in the 31st, 39th, 45th and 47th Council meetings but the Council did not recommend any change in the rates of bio-fertilizers and other such organic inputs. The Fitment Committee recommended maintaining status quo. The Secretary then requested for the comments of the Hon'ble Members of the Council on the recommendations put forth by the Fitment Committee on the issues pertaining to GST rate reduction on Sungudi Saree; upfront exemption from payment of IGST and refund mechanism to be done away with for IAEA; GST rate reduction for Av gas; machinery used in Sericulture Industry and automatic reeling machinery; all Sports goods & fitness products and Mega Power Projects. All agreed to the same.

Decision: The Council agreed with the recommendations of the Fitment Committee to maintain status quo w.r.t. agenda as detailed in para 5.65 above.

5.67 The Secretary then requested for the comments of the Hon'ble Members of the Council on the recommendations put forth by the Fitment Committee on the issues of Apple Carton Boxes. The Hon'ble Member from Himachal Pradesh requested that corrugated boxes of specified dimensions can be put in the lower tax bracket. He informed that 90% of the apple carton boxes used in the State of Himachal Pradesh have capacity from 10 Kg to 20 Kg which have specific dimensions different from the industrial packages and requested to reconsider the issue as the growers are being affected in small horticulture States like Himachal Pradesh and reduce the GST rate from 18% to 12%. He informed that in the last Council meeting, Maharashtra had come out in support of the issue.

5.68 Jammu and Kashmir informed that mostly corrugated boxes are being used in Jammu and Kashmir which was earlier taxed at 12% but for the sake of uniformity the tax rate was increased to 18%. He requested to reduce the GST rate on corrugated boxes to 12%.

5.69 The Secretary noted that this item had been deliberated earlier multiple times and had come up for discussion in the last meeting and stated that this will be difficult to administer as the same boxes could be put to multiple uses. The Hon'ble Member from Maharashtra stated that the boxes were going

to be used for various items and therefore, if tax rate is to be reduced, the reduction has to be given irrespective of end use. Therefore, it is not feasible to reduce the tax rate in this case.

5.70 Hon'ble Member from Gujarat stated that industrial products could also be packed in such boxes.

5.71 Hon'ble Member from Himachal Pradesh requested to reduce the GST rate on carton boxes from 18% to 12%.

5.72 The Hon'ble Member from Uttar Pradesh suggested to maintain the status quo on this issue.

5.73 Considering the aspect of usage of such boxes in agro-industry, the Hon'ble Chairperson referred it back to the Fitment Committee for re-examination after obtaining the views of the States of Jammu Kashmir and Himachal Pradesh.

Decision: The Council referred back the issue of GST on carton boxes to the Fitment Committee for re-examination.

5.74 The Secretary then presented the issue of GST rate and compensation cess rate reduction for two wheelers and four wheeler Flexi Fuel Vehicles and sought the comments of the Hon'ble Members of the Council, if any.

Decision: The Council agreed with the recommendations of the Fitment Committee w.r.t. flexi fuel vehicles to maintain status quo.

5.75 The Secretary then presented the issues pertaining to GST rate reduction in agricultural products; utensils made of brass; Heavy feedstock, Vacuum Gas Oil, reformates, etc.; all bakery products manufactured and sold by MSME and sought the comments of the Hon'ble Members of the Council, if any.

Decision: The Council agreed with the recommendations of the Fitment Committee w.r.t. agenda as detailed in para 5.74 above to maintain status quo.

5.76 The Secretary then presented the agenda pertaining to the goods (4 issues) where fitment has deferred the issues for further examination (**Annexure-III**).

5.77 On the issue of Millet based products, the Hon'ble Member from Delhi suggested that the decision on the Millet based products may be taken at an early date as this is the International year of Millets as declared by the Government of India and secondly, increasingly it is part of nutrition supplied by most of the Anganwadis and thirdly, it is a very healthy food option.

5.78 The Secretary assured that a decision on this would be taken as early as possible.

5.79 The Hon'ble Member from Karnataka supported the view of Delhi and informed that lifestyle diseases are on the rise due to imbalanced diets and millets are a healthier alternative also they use little water and consume very little chemical fertilizers so their environmental footprint is very minimal too. Millets are climate resilient crops and highly nutritious as they are naturally fortified. He requested for a positive and early decision on this as this was the International Year of Millets and Government of India has already taken other decisions to promote the use of millets.

5.80 The Secretary directed the Fitment Committee to come up with their recommendations expeditiously.

5.81 The Hon'ble Member from Uttar Pradesh stated that the tax rate related to steel scrap and Millet based products needs to be decided on an urgent basis. JS, TRU informed the Council that a sub-committee has been constituted by the Fitment Committee to deliberate upon the issue pertaining to steel scrap. JS, TRU further informed that the agenda related to steel scrap and millet based products would be taken up in the upcoming Council meeting. The Secretary informed that the issue pertaining to steel scrap and millets would be taken up and brought before the Council in the upcoming meeting.

5.82 JS, TRU introduced the next Agenda item 4(d) where recommendations were made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services (Annexure IV). She stated that the first issue was related to exempting GST on satellite launch services provided by private organizations and that satellite launch services by ISRO, Antrix Corporation Ltd. and New Space India Limited are already exempt from GST. The Fitment Committee recommended that exemption may be extended to satellite launch services provided by private organizations with a view to provide level playing field and encourage start-ups.

Decision: The Council agreed with the recommendations of the Fitment Committee to exempt GST on satellite launch services provided by private organizations.

5.83 Joint Secretary, TRU informed that the second issue listed at Sr. No. 2 of Annexure IV related to rectification in item at Sl. No. 3(ie) of notification No. 11/2017-CTR which continued to have reference to some of the housing schemes etc. figuring under erstwhile sl. No. 3(iv), (v) and (vi) of the said notification in order to take care of the real estate projects which commenced prior to 01.04.2019. The items at sl. No. 3(iv), (v) and (vi) of the above notification were omitted vide notification No. 03/2022-CTR dated 13.07.2022. The Fitment Committee recommended that the anomaly be rectified 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.

Decision: The Council agreed with the recommendations of the Fitment Committee w.r.t. insertion of an explanation at Sl. No. 3(ie) of notification No. 11/2017-CTR

5.84 The Secretary informed the Council that the third issue listed at Sr. No. 3 of Annexure IV related to omission of clause (h) of explanation to the entry at Sl. No. 24 (i) of the notification No. 11/2017 CTR. On the recommendation of GST Council in its 47th meeting, exemption entry at sl. No. 53A of the notification 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 had not been omitted. Fitment Committee recommended that the same may be omitted.

Decision: The Council agreed with the recommendations of the Fitment Committee w.r.t. omission of an 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.

5.85 The Secretary informed the Council that agenda Item listed at Sr. No. (4)(a) of Annexure IV related to exercise of option by Goods Transport Agencies (GTAs) to pay GST under Forward Charge Mechanism (FCM). 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 declaration that they want to revert to Reverse Charge Mechanism (RCM).

5.86 The Secretary further informed the Council that for agenda Item listed at Sr. No. (4)(b) of Annexure IV, 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. Having start date for exercise of option for a Financial Year as 1st April of the preceding Financial Year is not desirable as this may give rise to false impression to the GTAs that they have exercised option for the current financial year. 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.

5.87 JS, TRU stated that agenda Item listed at Sr. No. (5) of Annexure IV related to amendment to 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 subsequent to Hon'ble Supreme Court judgement in Mohit Minerals case in 2022. Fitment Committee recommended that the provisions which were introduced to provide level playing field to Indian Shipping Lines have lost relevance and thus needs to be amended/deleted. The proposed amendments/deletions shall be synchronized with Section 162 of Finance Act, 2023 which is to come into effect from a date to be notified.

5.88 JS TRU stated that agenda Item listed at (6) of Annexure IV pertained to clarification for the services supplied by a director of a company/body corporate to the company/body corporate in his private or personal capacity. Fitment Committee recommended to clarify by way of the circular that the services supplied by a director of a company or body corporate in private or personal capacity such as services by way of renting of immovable property to the said company or body corporate are not taxable under Reverse Charge Mechanism (RCM) under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017. The said entry covers only those services supplied by a director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate and shall be taxable under RCM in the hands of the company or body corporate.

Decision: The Council agreed with the recommendations of the Fitment Committee as detailed in agenda items listed at Sr. No. (4)(a), (4)(b), (5) and (6) of Annexure IV.

5.89 The Secretary stated that the last issue listed at Sr. No. 7 of Annexure IV pertains to issuance of clarification that supply of food and beverages in cinema halls is taxable as restaurant service and leviable to GST at 5%. Fitment Committee recommended that a clarification may be issued by way of a circular that food or beverages served in a cinema hall is taxable as restaurant service as long as (a) they are supplied by way of or as part of a service and (b) supplied independently of the cinema exhibition service. Where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

Decision: The Council agreed with the recommendations of the Fitment Committee for issuance of clarification with respect to supply of food and beverages in cinema halls.

5.90 The Secretary informed the Council that on 3 issues, no changes have been proposed by the Fitment Committee in relation to services (Annexure V): IGST exemption on purchase of aircraft and aircraft lease payment, GST exemption on services by the way of granting affiliation to schools by

Central Board of Secondary Education (CBSE) for conduct of secondary stage examinations in schools and on digital news subscription.

Decision: The Council agreed with the recommendations of the Fitment Committee as detailed in Annexure-V of agenda.

5.91 The Secretary informed the Council that the Fitment Committee deferred following 6 issues (Annexure VI) related to clarification on

- i. whether the service by way of hostel accommodation, service apartments/ hotels booked for longer period were service of renting of residential dwelling for use as residence and exempted as per entry number 12 of the notification no. 12/2017-CT(R) dated 28.06.2017
- ii. exemption from GST to services provided by District Mineral Foundations,
- iii. whether reimbursement of electricity charges received by the Real estate companies, malls, airport operators etc. from their lessees/occupants were exempt from GST,
- iv. whether ITC of other business verticals could be used to discharge GST on outward liability in respect of restaurant service,
- v. whether job work activity towards processing of “Barley” into “Malted Barley” attracts GST @ 5% and in case it was held that GST @18% is leviable, to regularize for past on ‘as is basis’, and
- vi. whether uniform GST rate of 5% was to be applied on Business Correspondent services provided in both rural/urban areas.

5.92 The Secretary called upon the Fitment Committee to bring the deferred agenda items to the Council for a decision in the next meeting.

5.93 The Secretary then introduced the agenda item on positive list of services to be specified in Sl. No. 3/3A of Notification No. 12/2017-CT (R) dated 28.06.2017 which was deferred in the 48th Council Meeting held on 17.12.2022. The Secretary informed the Council that the agenda item was deliberated in the officers meeting and it was suggested by one of the States that this agenda item should be taken up. Officers from the States of Punjab and Bihar had requested to defer this agenda item. The Secretary stated that the Council could take a call on whether to discuss or defer the agenda item. He further stated that there exists an ambiguity around the phrase ‘in relation to’ and one of the suggestions received was to delete this phrase from the entries in notification no. 12/2017 related to pure services and Composite supplies provided to Central Government, State Government or Local Authority. The Hon’ble Chairperson opened the floor for discussion in case the States wished to deliberate upon the agenda or the States might put forth their views during the Fitment Committee meetings in case of deferment.

5.94 The Hon’ble Member from Delhi expressed her desire to discuss the agenda and the issues emanating from it as Delhi had some concerns regarding the same. The Hon’ble member from Karnataka seconded it and stated that the proposition to remove the phrase “in relation to” put forth by the Secretary to the Council might be deliberated upon to see if any consensus could be built on striking out the phrase “in relation to” from Entry Nos 3 and 3A and the agenda item passed in the meeting itself in case there were no other issues.

5.95 The Hon’ble member from Karnataka stated that in cities like Bangalore and Delhi, there were specialized agencies which delivered municipal services. Therefore, services like garbage collection, water supply, etc. attract GST @ 18% which was not in public interest at all. Therefore, if the Council agreed to remove the phrase “in relation to” from Entry No. 3 and 3A that would resolve the issue for

the State of Karnataka. Any other issue, if pointed out by any other State may be deliberated upon in Fitment Committee meetings post deferment of the agenda item.

5.96 The Hon'ble Chairperson sought the opinion of other Hon'ble Members on the suggestion of Hon'ble Member from Karnataka. In case, the issue related to removal of phrase "in relation to" was the only issue and consensus was built in the Council, the Council might agree to pass the agenda by incorporating the decision of the Council. In case of any substantial issues, the agenda item might be deferred.

5.97 The Hon'ble Chairperson sought comments from Hon'ble Members of the Council whether they agreed to the proposition of Hon'ble Member from Karnataka. The Hon'ble Member from Tamil Nadu concurred with the views of Hon'ble Member from Karnataka suggesting for removal of the phrase "in relation to" from the relevant entry. However, he objected to the actions of pruning of the list for which tax exemption was available by giving a positive list. He cited that it leads to extra financial burden for local bodies and State Government. Further, the Hon'ble Member from Punjab sought some more time to study the list comprehensively and once again requested the Chair to defer the agenda item to be taken up in the next Council Meeting.

5.98 Considering the views of the States of Punjab and Bihar, the Chairperson proposed to defer the agenda item. The Secretary stated that it would be brought before the Council for a decision in the next meeting of the Council.

Decision: The Council agreed to defer the agenda item.

6. Agenda Item 5: Second Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming

6.1 Joint Secretary, TRU presented a Factsheet on Horseracing, Online Gaming and Casino which has been annexed as **Annexure-5**. The Factsheet encapsulates the factual status, revenue, legal position, present practice and the issues for information and decision of the GST Council.

6.2 Sh. Conrad Sangma, the Honorable Chief Minister from Meghalaya and the Convener of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming, apprised the Council that two reports had been submitted so far. However, in the second and final report the views remained inconclusive due to complexity of issue and the different views expressed by the participating States and hence stated that the GoM has recommended Council to take the decision.

6.3 In his address, he provided a contextual background of both reports and threw light on the initial understanding of actionable claim except lottery, betting, and gambling, which were exempted from Goods and Services Tax (GST). It was assumed that these activities which were under the purview of discussion of GoM fell within the domain of lottery, betting, or gambling. Nonetheless, after engaging with stakeholders, further clarity was gained, leading to the submission of the second report. It became apparent during the discussions that a lack of clarity persists regarding the differentiation between games of skill and games of chance. Games of chance fall under the category of betting and gambling, whereas games of skill do not. The absence of clear legislative provisions pertaining to the classification of games based on skill or chance compounds this issue and therefore depends on different Court judgements to define game of skill or game of chance. Moreover, he highlighted that the Ministry of Information Technology (MEITY) is actively working on formulating rules and classification of online gaming. Until such classification is established and comprehensive rules are framed, it was suggested that the Council may consider deferring any decision in this regard, as premature actions may adversely affect stakeholders turning the attention to the matter of casinos. The Honorable Minister expressed his

opinion that a highest tax rate of 28% should be levied on the Gross Gaming Revenue (GGR), calculated at the table level rather than on individual transactions. This approach is in line with international practices, as tracking each and every transaction of an individual may prove to be arduous. Sikkim and Goa are the only two States having these casinos and both suggested that rate of 28% should be levied on the Gross Gaming Revenue (GGR).

6.4 Furthermore, he added that the GoM engaged in an extensive discussion on whether Horse racing classifies as game of skill or chance and should be treated as a separate category or encompassed within the realm of betting and gambling. It was opined that there is no distinct classification for games of skill, and they should be considered as part of the broader betting and gambling category. The Hon'ble Supreme Court in Dr. K.R. Lakshmanan case held that Horse Racing is a game of skill however, there is no legislative provision for mandating it as game of skill. There are also many cases which were bought out by West Bengal during the GoM meeting and these cases are related to lottery but horse racing was mentioned in those cases. Accordingly, a tax rate of 28% on the full face value was recommended by GoM for such games.

6.5 The Convenor of the GoM acknowledged that despite multiple deliberations and expert opinions, the main challenge lies in the fact that the GoM addresses three different games compounded by the inherent ambiguity in existing legislation regarding whether these are games of skill or chance. Hence, ambiguity has been left to be resolved by the Courts which complicate the matter more. Moreover, the report highlights the dual nature of this issue, where economic growth and job creation stand in contrast to the adverse social impact on the youth. Achieving a delicate balance between these competing interests necessitates a phased approach to tackle this issue.

6.6 He stated that in conclusion, the GoM Report underscores the complexity of the subject matter, urging careful consideration and a comprehensive approach by all the States to address the concerns and interests of all stakeholders.

6.7 The Hon'ble Member from Gujarat concurred with the viewpoint of convenor and acknowledged that the decision at hand on Casinos predominantly affects two States. The Minister highlighted that a team from the Group of Ministers (GoM) had visited the affected areas and in their opinion, the value should be calculated on the Gross Gaming Revenue (GGR).

6.8 The Hon'ble Member from Tamil Nadu expressed the view that the State had already issued a notification prohibiting online gambling and online games of chance. The Minister suggested that the same could be true for some other States also. As online gambling and online games of chances are banned in Tamil Nadu, any decision by GST Council should conform with such State legislation. Regarding horse racing, the Minister proposed that if it is deemed a game of skill, a tax of 28% should be levied on the GGR value. Conversely, if it is classified as a game of chance, the full value at a tax rate of 28% should be considered. There should be a mechanism to receive and segregate the money. The receipt money should be directly deposited into operator account and an escrow separate account should be there to hold the prize money for eventual payout.

6.9 The Hon'ble Member from Maharashtra adopted a resolute stance, emphasizing the urgent need to reach a long-awaited decision on the meeting day. The Minister recommended that online gaming, casinos, and horse racing be incorporated into entry 6 of Schedule III of the Central Goods and Services Tax (CGST) Act, 2017 alongside lottery, gambling, and betting as taxable actionable claim. The Minister stated that delving into the specifics of what constitutes a game of skill or chance is unnecessary as the law should be straightforward, easy and simple. The interpretation of games of skill and chance is subjective within the realm of law which would create confusion on tax point of view. In

addition, the Minister asserted that activities detrimental to social well-being should not be encouraged or promoted.

6.10 The Hon'ble Member representing Uttar Pradesh expressed the urgency of taking the decision. He conveyed that two reports have been compiled so far. First report was submitted with the consensus of all States. However, after submission of first report in the Council Meeting, the perspective on the matter changed. Uttar Pradesh maintained a steadfast view that a tax of 28% should be levied on the full-face value. The Minister also highlighted the absence of a mechanism for calculating Gross Gaming Revenue (GGR) and that it would generate negligible tax revenue. He also asserted that any game involving monetary transactions should be categorized as a game of chance rather than a game of skill. Moreover, he informed the Council that international jurisdictions also impose multiple taxes in addition to GGR. Furthermore, he expressed his belief that Horse Racing is not a game of skill, but rather a game of chance, given that individuals predominantly place bets on it without adequate knowledge or through guesswork. Consequently, he advocated for taxing all such games at the highest tax rate based on their full-face value.

6.11 The Hon'ble Member from Goa disagreed with the views of the other States and emphasized the significance of the matter for their State. He likened the evaluation of different categories of games to the act of comparing apples and oranges. He apprised the Council of the necessity to follow internationally accepted best practices that would prevent the closure of industry. He suggested that the Goods and Services Tax (GST) should be imposed based on GGR. He added that during the preparation of the second report, experts evaluated the matter from various perspectives and varied opinions from stakeholders were also sought which is the main reason for the lack of a firm recommendation from the Group of Ministers (GoM) and the report remaining inconclusive. Furthermore, he asserted that this subject is still evolving over time. He further proposed that the cardinal principle of GST is to align the pre-GST tax regime with the present one. He informed the Council that Goa previously levied a maximum entertainment tax of 15% on Casino industry and it was never 28% or not even 18%.

6.12 The Hon'ble Member from Goa highlighted the heavy dependence of Goa's economy on tourism sector, particularly the Casino industry. He raised the issue of the revenue implications for the State if the decision led to the closure of the Casino industry strongly emphasizing the financial impact of such closure of casinos on the State. He also requested that if the consensus could not be reached on taxing the Casino industry based on GGR, a new Group of Ministers should be constituted including stakeholders as members. He cautioned that without proper regulation, the industry would not cease to exist but rather shift to a grey platform resulting in more adverse consequences. He further added that there is a new norm coming for 30% TDS apart from 28% of GST and resulting in 58% of total tax in case of winner. Lastly, he appealed for the tax rate to align with the pre-GST regime and be set at 28% based on GGR and requested the Council to decide in favour of Goa and Sikkim due to their dependency on Casino industry.

6.13 The Hon'ble Member from West Bengal expressed agreement with the stance of Minister of Uttar Pradesh and proposed that the tax rate should be set at the highest level on the full-face value. She further recommended for amending the Schedule to include Online Gaming, Casinos, and Horse Racing in the entry of actionable claim.

6.14 The Hon'ble Convenor of GoM stated that there is no dispute regarding the tax slab, as all States agree to tax it at the highest rate of 28%. The only point of contention revolves around the valuation. Furthermore, he explained that the change in perspective from the 1st report occurred due to a major dispute regarding the definition of an actionable claim. Initially, the stance was that all games had a genesis in betting or gambling. However, it later became apparent that these games also involve an

element of skill, which became a subject of legal controversy and this is the reason that the definition must be amended.

6.15 The Hon'ble Union Finance Minister responded that the Hon'ble Courts can decide them to be a game of skill or chance. However, the key question is whether the government can impose taxes on unregulated activities. She provided an example of crypto assets which are not regulated but are still subject to taxation and no Court has challenged this. She further added that these games involve value creation, whether with or without skill. She also stated that the governments have the right to tax that value and there is no legal conflict in doing so. It may be game of skill or game of chance and debate may be going on but tax should be imposed on these activities. She clarified that the Ministry of Electronics and Information Technology (MEITY) is in the process of formulating technical regulations related to online gaming. MEITY is working on regulatory framework in that domain. These types of regulations do not affect the GST Council and do not infringe upon its sovereign right to impose tax.

6.16 The Hon'ble Member from Uttar Pradesh reiterated his earlier views and stated that the main purpose of going to Goa is tourism for beaches, environment and only few tourists go to casino. If a person is ready to lose money in casino, he must be ready to pay taxes for the welfare schemes.

6.17 The Hon'ble Member from Maharashtra expressed the opinion that tax should be charged on the full- face value and it is up to the Council to decide whether it should be set at 18% or 28%. Before calculating tax, a suitable abatement in face value may be given. Secondly, he firmly stated that online gaming and racecourse are not games of skill on the part of person betting, and they should be taxed on their full value. He further added that the operators who are engaged in these activities are of high economic status and they should be treated accordingly.

6.18 The Hon'ble Member from Karnataka supported the views of Uttar Pradesh and Maharashtra. He argued against delving into the question of whether a game is based on skill or chance and stated that there are many court judgments deciding whether an activity is a game of skill or chance. The sovereign has the power to tax regardless of the nature of game. He highlighted that while the GST Council is primarily a body to take decisions on tax, it has also kept in mind the moral and social factors since its inception like imposing environmental cess, cess on sin goods and luxury goods based on moral principles. The tax on tobacco, luxury cars, and other items had sometimes exceeded their manufacturing value taking into account social principles. He suggested that gambling and betting have always been considered undesirable activities in our country and our taxation should be aligned with these social policies. He stated that all these three activities fall under the same legal category and granting the casino an exception tax on gross gaming revenue (GGR) based mechanism could lead to legal disputes in future. He advocated for maintaining a uniform law for all three activities. In addition, he supported views of Tamil Nadu and pointed out that online gaming has had a negative impact on the youth, becoming an addiction for them. He expressed the view that no concession should be given to these activities and these should be taxed at the highest rate. He stated that he did not oppose the idea of treating casinos separately, but uniformity would be preferable. He also mentioned that the Karnataka Government has been taxing race courses based on their gross value under the respective Acts since the beginning and litigation had only arisen in recent years even though tax was previously paid on the gross value only.

6.19 The Hon'ble Member from Kerala raised concerns about the impact of taxing on the basis of GGR mechanism on lotteries as it could lead to litigation. He stated that this approach would also affect the taxation of lotteries which are currently taxed at the full value of 28%. The Lottery Associations have already made representations to tax @ 28% based on GGR.

6.20 The Hon'ble Member from Gujarat noted that the initial consensus in the Group of Ministers (GoM) was to impose the highest tax rate of 28% on all three activities. He expressed the need for a conclusive decision in the meeting as the matter has been dragged on without reaching a resolution.

6.21 The Hon'ble Member from Uttarakhand agreed with the proposal to tax all activities at the highest rate of 28%.

6.22 The Hon'ble Member from Delhi suggested that all three activities should be addressed separately. Since the States of Goa and Sikkim are the only ones directly affected by casinos, their situation should not hinder a decision on other sectors. She emphasized that the online gaming sector is rapidly growing and requires a decision. Furthermore, she stated that in the case of casinos, all States had a strong opinion but the affected States should have a greater say. She recommended that taxation based on the GGR mechanism would involve complex calculations and proposed that the full-face value should be taxed.

6.23 The Hon'ble Member from Nagaland stated that the Goods and Services Tax (GST) should not be considered as a form of charity but rather as a means to generate tax revenue for the nation. The Hon'ble member drew attention to the fact that gambling which encompasses these activities are bet based on either skill or chance, with the ultimate intention of earning money. It was suggested that tax should be levied on the full value of these activities without any exemptions as they are profit-oriented sectors.

6.24 The Hon'ble Member from Sikkim expressed agreement with the comprehensive and informative report presented by the Convenor, Group of Ministers (GoM). The Hon'ble Member informed the Council that the State of Sikkim aligns itself with the view put forward by Goa as documented in annexure on page 16 of Agenda No. 5. It was proposed that a GST rate of 28% be imposed based on the Gross Gaming Revenue (GGR) mechanism as this was tried and tested valuation method. Then he apprised the Council that prior to the implementation of GST, Sikkim taxed Casinos at the rate of 10% on the GGR value. Furthermore, he stated that presently, 28% GST rate is being charged and if the valuation method is altered, it would have a severe blow to the casino industry.

6.25 The Hon'ble Member then highlighted the distinction between these three activities despite their apparent similarities as mentioned in 2nd report of GoM. Specifically, the Hon'ble Member underscored that the unique feature of a casino is that each chip purchased by a player does not represent an actionable claim. It was opined that imposing GST on the full-face value of all chips purchased in a casino would be unjustifiable. The Council was informed that the annual revenue generated by the State of Sikkim from these activities amounts to approximately Rs. 20 crores which is a substantial sum for a small State like Sikkim where option of generating revenue is very limited. Casino industry is not bound to any season and it brings people throughout the year. He further requested the Council for separate rule for casino to levy of GST at the rate of 28 % on GGR. Regarding online gaming, it was suggested that an effective method for computing the value of the supply of online gaming may be determined by an inter-ministerial task force dedicated to this matter.

6.26 The Hon'ble Member from Chhattisgarh expressed agreement with the views presented by Uttar Pradesh. He highlighted the adverse impact of these activities on our society. He further emphasized the urgency of resolving this matter. It was recommended that a 28% GST rate be levied on the full value of these activities regardless of whether they involve game of chance or skill.

6.27 The Hon'ble Member from Arunachal Pradesh seconded the views of Uttar Pradesh and Meghalaya. He quoted example of Las Vegas and Macau which have no other attraction and where

people go to play casino only whereas Goa is not only meant for casino and therefore, the rate of tax does not affect tourism sector of Goa.

6.28 The Hon'ble Member from Andhra Pradesh stressed the importance of considering the specific issues related to each State, keeping in mind the federal nature of the country and one nation one tax. It was stated that larger States have ample resources to generate revenue whereas smaller States are often at a disadvantage. The Hon'ble Member agreed with the views of Delhi and suggested that States like Goa and Sikkim should have some degree of flexibility in raising revenue in absence of other source of revenue.

6.29 The Hon'ble Member from Meghalaya reiterated that the procedures involved in each game are distinct therefore they should be taxed based on their individual intricacies. It was proposed that a single formula for calculation, could not be justified for every game. Additionally, the Hon'ble Member recommended making appropriate amendments to the law in accordance with the decisions reached in the Council to avoid any legal disputes.

6.30 The Revenue Secretary clarified that an amendment to the law is necessary as online gaming companies have argued in various courts that online gaming is an actionable claim but is not a taxable actionable claim in Schedule III of the Central Goods and Services Tax (CGST) Act. They contend that it is a game of skill and does not involve any element of gambling or betting. The Council was informed that the GGR is typically only 10-15% resulting in an effective tax rate of 1-3%. The Secretary strongly put across that even food items are taxed at a rate of 5% which is the lowest slab rate. Therefore, clarity must be brought through legislative amendments. It was mentioned that the draft amendments have been prepared carefully in consultation with the Additional Solicitor General of India. Furthermore, it was stated that the law should not be subject to interpretation regarding whether the activities are games of skill or chance. With regards to the issue of retrospectivity, the Secretary stated that claims for retrospective tax would continue but there would be no matter of dispute with regard to prospective implementation. Finally, it was emphasized that the Council is a taxing body and not a regulatory authority. So, Council should not be concerned with whether these activities are prohibited or regulated.

6.31 It was observed that all States are in agreement regarding the necessity of amending the law to provide clarity on these issues. The decision on whether this amendment should be addressed in the Law and Fitment Committee or brought back to the Council was left to the Council's discretion with the aim of expediting the process. The Secretary suggested that the amendment may be brought through ordinance or through legislature in next session so that Revenue could be collected on these activities as soon as possible.

6.32 Thereafter, the Hon'ble Chairperson sought confirmation of the Council members on all three issues (i) the issue of amending the law to include Casino, Race Course, and Online Gaming in Entry 6 of Schedule III of the CGST Act, 2017 alongside Lottery, Betting, and Gambling. This inclusion would help avoid any interpretational confusion. She clarified that the exemption previously granted for GST on actionable claims except for Lottery, Betting, and Gambling in Entry 6, would now be amended so as to remove any confusion, to exclude Online Gaming and Horse Racing from exemption which would be subject to GST without any exemption, (ii) the rate of tax and (iii) the value for supply.

6.33 The Hon'ble Member from Meghalaya expressed his agreement for the amendment deeming it necessary and suggesting that the first report of the GoM (Group of Ministers) would suffice after such amendments. The Revenue Secretary then informed the Council that a few more amendments would be worked out by the Law Committee and circulated to the respective States for amendments in their State GST Act subject to the Council's approval.

6.34 The Hon'ble Member from Karnataka proposed to include an explanation in Entry 6 to incorporate these games rather than amending the entire entry. Similarly, the Hon'ble Member from Tamil Nadu suggested that the final draft of the amendment should be shared with all States. In response, the Revenue Secretary stated that States like Tamil Nadu and Karnataka who wished to be involved, could be included in the Law Committee to ensure a concurrent decision.

6.35 Taking into consideration the concern raised by Tamil Nadu, the Hon'ble Chairperson sought the Council's wisdom on whether if any State has a law banning certain activities like Online Gaming and the Council deems fit to tax that activity then would the amendment contradict the State Law. The Revenue Secretary clarified that even currently, the Council imposes taxes on Gambling and Betting, despite them being banned in certain States. He explained that the Council could only decide the taxability of activity and the States regulate these activities. The Hon'ble Member from Karnataka and Kerala agreed with the explanation given by Revenue Secretary.

6.36 The Revenue Secretary then requested the Council to decide the tax rate and valuation method for these activities. He stated that uniformity in taxation for these activities was preferred, however during consultations with the ASG (Additional Solicitor General), he indicated that differential treatment could also be considered. He further mentioned that there was consensus among all States to tax Online Gaming and Race Courses at 28% GST on their full value. The only remaining issue was that of Casinos to be decided upon.

6.37 The Hon'ble Chairperson urged the Council to focus on executing and implementing the law on these activities requesting practical and executable solutions rather than idealistic opinions.

6.38 Hon'ble Member from Goa and Sikkim strongly advocated for differential taxation of Casinos based on the Gross Gaming Revenue (GGR) mechanism.

6.39 However, the Hon'ble Chairperson informed the Council that a consensus had been reached among the States to tax Online Gaming and Race Courses at 28% on the full-face value. She requested the Council to decide on the request made by the States of Goa and Sikkim to treat Casinos differently and tax them based on the GGR mechanism.

6.40 The Hon'ble Member from Chhattisgarh, Kerala, and Karnataka expressed their opinion that the principle of law should not be different for Casinos compared to other activities as it could have far-reaching effects on other services. The Hon'ble Member from Karnataka suggested that the principle of law should be the same for all activities and taxed on face value while the tax rate could vary. The Hon'ble Member from Maharashtra also agreed with this view and proposed taxing Casinos at 28% initially with the possibility of providing an abatement.

6.41 The Hon'ble Member from Nagaland stated that if casino was pan India and same rate would not prevail, then it could have repercussion. As casino is specific to only two States i.e. Goa and Sikkim thus exceptions could be made. Casino is lifeline for these two States and it would have huge impact on their revenue.

6.42 The Hon'ble Member from Andhra Pradesh expressed the belief that only the States of Goa and Sikkim would be affected by this taxation policy and it would benefit them in some way. He suggested that there would be no harm in treating Casinos differently or applying a different tax rate compared to other activities.

6.43 The Hon'ble Member from Meghalaya suggested that since Betting and Gambling were already included in Entry 6 giving different treatment to Casinos would create confusion. He proposed that

either the two States could tax Casinos outside the GST regime or the definition of full face-value could be worked upon to suit the affected States.

6.44 The Hon'ble Member from Goa requested that Casinos can be taxed based on the GGR mechanism and suggested that the Council could review this decision if it does not work out as expected.

6.45 Addressing the concerns raised by the Hon'ble Member from Goa, the Hon'ble Chairperson requested to have trust in the Council and its functioning, highlighting that the Council is taking a rigorous approach to find a solution that benefits every industry and State.

6.46 In light of the urgency to resolve this long-standing issue, the Hon'ble Chairperson urged the Council to come to a final decision. The Hon'ble Chairperson stressed that the solution should not be too burdensome which may lead to the closure of any industry while also maintaining moral correctness.

6.47 The Hon'ble Member from Goa requested that Casinos should be taxed at an abatement of 60% resulting in an effective tax rate of 11.2% which is around 12% and then casino industry would survive.

6.48 The Hon'ble Member from Uttar Pradesh then expressed that it is neither socially nor morally right to support any State in the name of Casino and it will give wrong message to the public. He further added that Goa may be facilitated by other means but not through the measure as suggested.

6.49 Considering the viewpoints expressed by the majority of States, the Hon'ble Chairperson stated that since the proposal of the Hon'ble Member from Goa was not acceptable to the Council, the decision was to tax Casinos at the rate of 28% on their full-face value.

Decision: The Council decided to clarify that actionable claims supplied in Casinos, Race course and online gaming are also under the purview of GST to be taxed at the rate of 28% on full face value irrespective of whether the activities are a game of skill or chance. Accordingly, the law may be amended to provide clarity on the matter.

7. Agenda Item 6: Recommendations of the 18th and 19th IT Grievance Redressal Committee for approval/decision of the GST Council

7.1 The Secretary requested JS, GST Council Secretariat to present the agenda item regarding recommendations of the 18th and 19th meetings of the IT Grievance Redressal Committee (ITGRC) before the Council.

7.2 JS, GST Council Secretariat then presented the recommendations of the 18th and 19th meetings of the IT Grievance Redressal Committee (ITGRC) on the data fixes carried out by GSTN as per the Standard Operating Procedure approved by the Council, as detailed in the agenda notes.

7.3 The Secretary then sought the comments of the Hon'ble Members of the Council on the recommendations of ITGRC and the Council approved the same.

Decision: The GST Council approved the recommendations made by the ITGRC during its 18th and 19th meetings.

8. 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

8.1 The Secretary introduced the agenda regarding scheme of budgetary support under GST regime in lieu of earlier excise duty exemption schemes. The Secretary informed the Council that the issue arose because of the Hon'ble Supreme Court's judgement dated 17.10.2022 in the case of M/s Hero Motocorp Ltd. and Sun Pharma Laboratories Ltd. Vs Union of India & Ors. wherein the Hon'ble Court held that the appellant's claim based on promissory estoppel was without substance, however, their claim deserved due consideration and allowed the appellants to represent before the concerned State Governments and the GST Council. The Hon'ble Court directed the Council and the State Governments to consider representations made by the appellants on the subject. The Secretary informed the Council that the issue had been discussed in an earlier meeting and it had been decided 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, shall be with the concerned State or Central Government.

8.2 The Secretary stated that there appeared to be no need to revisit the decision and that the Council may reject the representations so received in this regard. In the officers' meeting, the States had expressed their inability to devise such a scheme as they were already implementing other incentive schemes.

Decision: The Council agreed to continue with the existing scheme of budgetary support whereby reimbursement of 58% of the net CGST and 29% of net IGST was granted to the eligible manufacturing units in specified States and rejected the representations received for the balance 42% of the net CGST and 21% of net IGST.

9. 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.

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

9.2 Accordingly, the ad hoc exemption orders issued on 28th March, 2023 on request from Shri Maneesh P.M. for exemption from payment of IGST under sub- section (7) of section 3 of the Customs Tariff Act, 1975 on import of drug Injection Qarziba for baby Niharika G.M. was placed before the Council.

Decision: The Council took note of the ad hoc exemption order.

10. Agenda Item 9: Report of Group of Ministers (GoM) on GST System Reforms

10.1 The Secretary requested the Hon'ble Member from State of Maharashtra to present Agenda Item 9 i.e. the Report of Group of Ministers (GoM) on GST System Reforms. The Member stated that the Commissioner of State taxes would be making the presentation on the report.

10.2 The Commissioner of State taxes, Maharashtra made a presentation (**Annexure -6**). He informed the Council that the GoM on GST System Reforms was formed on 18th September, 2021 and the main

Terms of Reference were to suggest changes in the business processes and IT Systems to plug revenue leakages, suggest better measure for compliance and revenue augmentation and to co-ordinate between different tax authorities. The GoM comprises Members from the States of Maharashtra, Haryana, Delhi, Assam, Andhra Pradesh, Odisha, Tamil Nadu, and Chhattisgarh. He further stated that this GoM is a Standing GoM and submits its report periodically as and when meetings are held. He informed that the GoM has held three meetings to date and that the report of the 2nd Meeting held on 10th February, 2022 was tabled and accepted by the Council in its 47th Meeting.

10.3 He further informed the Council that the 3rd Meeting of the GoM was held on 13th February, 2023 and that the recommendations of this third meeting are being tabled before the Council. He stated that the GoM in its third meeting considered 6 agenda items and that they would be taken up individually.

10.4 The first agenda item that was considered by the GoM was regarding the hard locking of Table-4 of GSTR-3B and it is basically about the credit that is being claimed in FORM GSTR-3B to be locked with the credit that is available in the FORM GSTR-2A. He informed the Council that the GoM after due deliberations has concluded that the hard locking of Table-4 of GSTR-3B is not feasible as of now as there are many corner situations that would cause inconvenience to the taxpayers if hard locking is done. The GoM as a first step has recommended that a rule based on gap in ITC utilization can be implemented in a phased manner on similar lines as mismatch between GSTR-1/3B system which is already under implementation.

10.5 The second agenda item that was considered by the GoM was regarding the tracking and identification of Non-Existent Tax Payers (NETP). He stated that with respect to fake entities detected there is a need to have a national database as it will help in the tracking and recovery of fake ITC flow credit. Having a computerized system will help in tracking these fake entities spread across different States. He also stated that many commonalities are observed in these fake entities such as they use the same mobile number, PAN number, Aadhar etc. and having a common repository will enable sharing of these data across various States. The major recommendations made by the GoM with respect to this agenda item are the need to formulate an SoP for handling these NETPs, a uniform policy of ab-initio cancellation of these NETPs across State/CBIC zones and to develop a System driven solution to facilitate the declaration of NETPs by the tax administrations and to develop a System based communication regarding recipients of ITC from NETP, among the various States tax administrations for smooth coordination of follow-up investigations.

10.6. The third agenda item that was considered by the GoM was regarding the Reporting of transactions by payment gateways & banks. He stated that the monitoring of B2C transactions is at present weak and that at present GSTN is unable to validate these transactions. It was recommended by the GoM that the data available from NPCI, RuPay, and VISA/Master Card can be compiled and this can be checked against the details provided by the registered person regarding turnover. He further informed the Council that this recommendation is in its initial stage and that the details need to be worked out. The GoM has recommended forming a committee to develop a detailed methodology and to hold detailed consultations with NPCI and RBI to implement this recommendation.

10.7 The fourth agenda item that was considered by the GoM was regarding the HSN-level reporting in GSTR-1. Commissioner Maharashtra informed the Council that in the initial phases, the dealers are not disclosing the full turnover commodity wise and therefore, it is proposed to make this compulsory in a phased manner. The GoM has recommended a phase-wise and time-bound approach to be adopted for action against non-compliant taxpayers with nudging messages and e-mails in the initial phase and blocking of GSTR-1 to be considered for failure to fill HSN details in the later phase.

10.8 The fifth agenda item that was considered by the GoM was regarding the proposal for integration of Income Tax, ICEGATE and other data points to address underreporting of supplies and to address the issue of under-reporting of Import of Services. On integration with Income Tax and ICEGATE the GoM suggested that DoR may coordinate the same. The benefit to GST on matching with these data points are quite obvious. In this regard, the Hon'ble Member from Karnataka suggested the committee could also explore the possibility of integrating the data that is available with the Ministry of Corporate Affairs.

10.9 The Commissioner of State Taxes Maharashtra further stated that at present all supplier data on goods and services are triangulated on the domestic side, but for the import of services, there is no triangulation of data as it is an independent field reported by the taxpayer. It was also informed to the Council that data is available with RBI for foreign remittance and the proposal was to explore the possibility of triangulating foreign remittance data with RBI with the import of services data reported by the registered person. He further informed the Council that this recommendation is in its initial stage and that the GoM has recommended forming a committee of Officers from TPRU-1, GSTN, Centre, Maharashtra, and RBI to make a detailed report on this proposal.

10.10 The sixth agenda item that was considered by the GoM was regarding the development of MIS. He also informed the Council that two requests were received from State of Tamil Nadu and Odisha for the development of MIS. The first request was from Odisha for the development of MIS for commodities liable for GST under RCM and the second request was from Tamil Nadu for the development of MIS for auto-populated interest on account of late payment of tax in cases where GSTR 3B is filed late. He informed the Council that the GoM has approved the development of MIS.

10.11 He further informed the Council that the GoM has felt that the entire GST network and system should move towards strengthening the registration process by using biometric validations and premises verification, controlling the flow of fake ITC at both ends, i.e. the recipient and the supplier of a supply and also expanding the use of third-party data for better forecasting of turnover and other verifications of taxpayers.

10.12 The Secretary proposed that the Council could accept the report of the GoM and that the recommendations made by the GoM can be implemented by GSTN in consultation with the Law committee.

Decision: The Council accepted the recommendations made by the GoM on System Reforms.

11. Agenda Item 10: Proposal for creation of State Co-ordination Committee comprising of GST authorities from the State and Central Tax Administration

11.1 The Secretary presented the Agenda No. 10 regarding creation of State Level Co-ordination Committee comprising GST authorities from the State and Central Tax Administration. He informed the Council that the proposal had come up during the National Coordination Committee meeting that was held in April, 2023 with the tax authorities from both Centre and State.

11.2 The Secretary informed the Council that the Committee would be co-chaired by the Chief Commissioner/ Commissioner of CGST/SGST and that they shall be co-conveners on rotational basis for one year each. He further stated that the Committee shall meet at least once every quarter or as the co-Chairs decide. He further informed that the committee will deliberate on co-ordination issues relation

to enforcement, investigation, audit, grievances and any other matter as agreed to by co-Chairs. He also informed that the agenda was discussed in detail in the Officers' Meeting.

11.3 The Hon'ble Member from Uttar Pradesh welcomed the proposal and stated that Committee would be a welcome step towards co-ordination between tax authorities.

11.4 The Secretary further requested the Council that, once orders are issued for constitution of Committee, to ensure that the Committee meets regularly so that concerted and coordinated efforts can be made towards coordination at State level.

Decision: The Council approved the proposal for creation of State Co-ordination Committee comprising of GST authorities from the State and Central Tax Administration.

12. Agenda 11: Implementation of GSTAT consequent to passing of Finance Act, 2023

12.1 The following issues under the agenda were placed for consideration of the GST Council:

- a. 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. The GSTAT would be constituted after these amendments are notified.
- b. As per Section 110(4)(b)(iii), the Chief Secretary of a State is to be nominated by the GST Council as a Member of the Search Cum Selection Committee for all other cases than the Technical Member (State) of the State Tribunal.
- c. For States having a common Bench but separate High Court, it may be clarified that the appeal arising out of GSTAT order in such cases will fall within the jurisdiction of the High Court of the State where the taxpayer is located.
- d. The proposed Number of Benches along with their jurisdiction in States /UTs with legislature.

12.2 The Secretary presented the agenda and made a brief presentation. The presentation (attached as **Annexure-7**) summarized the State-wise Benches requested (sorted in descending order of the number of taxpayers in each State) along with domestic GST collection figures from each State i.e. collections net of IGST on imports. He brought to the notice of the Council that each Bench comprises 4 Members and, thus, each Bench effectively means two functional Benches.

12.3 The Hon'ble Member from Uttar Pradesh stated that Uttar Pradesh has the highest number of taxpayers and the highest population in the country with a wide geographical expanse. He informed the Council that for these reasons they have proposed five Benches at Lucknow, Agra, Prayagraj, Varanasi and Ghaziabad. This had been cleared by the State Cabinet earlier as also discussed by the Council in its 39th and 40th meetings. This may be cleared without reduction.

12.4 The Hon'ble Member from Maharashtra stated that Maharashtra has 20% share in the GST revenue and appealed that as proposed seven Tribunals in their State should be recommended.

12.5 The Hon'ble Member from Tamil Nadu requested for three Tribunal Benches at Chennai, Madurai and either at Coimbatore or Salem considering their population. While the request from the State Government had not been sent earlier, their suggestion may be taken now.

12.6 The Hon'ble Member from Punjab stated that they propose to form two Tribunal Benches. They have communicated for only for one Bench at Chandigarh/Mohali and will be deciding on the location of the second Bench soon and communicate the same.

12.7 The Hon'ble Member from Andhra Pradesh stated that considering the geographical diversity in the State and poor road connectivity in certain areas, they have proposed three Benches.

12.8 The Secretary brought out the total number of Benches suggested by the States is coming to around 50. This means selection of nearly 200 Members. In the initial days, the workload with the Benches may not justify this high number. Accordingly, in the Officers' meeting, States were requested to begin with few Benches. It needs to be kept in mind that one Bench in effect means two functional Benches. If we were to proceed in one go to do these many recruitments, there may be some compromise on the quality. It will be a better idea to proceed in a staggered manner while agreeing to the suggestions from the States.

12.9 The Secretary suggested that initially, all the State Capitals may have one Bench (other than North-Eastern States and Sikkim). In addition, there may be Benches at location of High Court Benches. For instance, U.P. has High Court Benches at Lucknow and Allahabad. They can have two Benches, which will mean four functional Benches. Similarly, Maharashtra and Rajasthan can have two Benches. This is only in first phase and as they are filled up and made operational, we can proceed to higher numbers. The requests received can be approved, subject to the condition that in the initial phase, the process is started with Benches at State Capitals and places where High Court Benches are located.

12.10 The Hon'ble Member from Uttar Pradesh stated that at least three Benches should be recommended in the first phase and the request made should not be cancelled.

12.11 The Hon'ble Chairperson clarified that the Benches as proposed by the States were not being reduced but the idea was to start with fewer Benches in the initial phase. The other Benches may be set up subsequently.

12.12 The Hon'ble Member from Kerala brought out the distance factor between the Capital city and Ernakulum where the High Court is located. Both of them can have one Bench of two Members each. Agreeing with the suggestion, the Revenue Secretary clarified that the same can be done at their level by setting up sitting/ circuit Benches. The same can be enabled so that more cities can be covered by one State Bench. He stated that State Bench and sitting/circuit Bench could be located in different cities for wider geographical representations with two Members each.

12.13 The Hon'ble Member from Chhattisgarh stated they were in agreement with this arrangement and would have two Benches starting with Raipur and then at Bilaspur.

12.14 The Secretary summed up that post discussions the final consensus is to have limited number of Benches to begin in first phase. On the issues of jurisdiction of the Benches, the Secretary informed that the information would be collected from the States which may need to provide the details of jurisdiction of proposed Benches and with the approval of the Hon'ble Chairperson, the same would be placed before the Council for ratification.

12.15 The Secretary further suggested that the Chief Secretary of Uttar Pradesh or Maharashtra may be nominated as a Member of the Search cum Selection Committee. He stated that these two States have the highest number of taxpayers. The Hon'ble Member from Karnataka suggested that Chief Secretary Karnataka may be nominated as a Member of the Search cum Selection Committee. The Secretary stated that if it was agreeable to all, the Chief Secretary of Maharashtra may be nominated as a Member of the Search cum Selection Committee as Maharashtra had the largest share in GST revenue

and the second largest number of GST taxpayers in the country. He also suggested that this nomination may be for one year and be made on a rotation basis for subsequent years. He brought out that selections will be required to be done every year due to constitution of new Benches, turnover of members due to resignations, retirements etc.

Decisions:

- a. **The Council recommended that provisions of the Finance Act, 2023 pertaining to the GST Appellate Tribunal may be notified by the Centre with effect from 01.08.2023. This will pave the way for the early setting up of the Benches of the GST Appellate Tribunal.**
- b. **Further, the Council recommended that the Chief Secretary of Maharashtra be nominated as one of the Member of the Search cum Selection committee in terms of Section 110(4)(b)(iii) of the CGST Act 2017 for a period of one year.**
- c. **It was clarified that for states having a common Bench but separate High Court, an appeal arising out of GSTAT order will fall within the jurisdiction of the High Court of the State where the taxpayer is located.**
- d. **Regarding the number of State Benches, the Council recommended constituting the Benches as per proposal of the States. However, they may be operationalized in a phased manner based on the case load. The Council recommended to initially operationalize one Bench each in the major States. However, for States having High Court Benches at two or more places in the State, or large number of tax payers, it recommended to initially operationalize more than one Bench also. Moreover, a Bench may have sitting at more than one location (with two members at each location) which will enable more cities to be covered by the State Benches.**
- e. **The jurisdiction of the Benches may be decided in consultation with the States concerned, with the approval of the Hon'ble Chairperson, and placed before the Council for ratification.**

13. 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 the Performance Report of State Level Screening Committee (SLSC), Standing Committee (SC) and Directorate General of Anti-Profitteering (DGAP) for 3rd quarter and 4th quarter of the F.Y 2022-23

13.1 The Secretary presented the Agenda No. 12 regarding Performance Report of Competition Commission of India (CCI) for month of December, 2022 and 4th quarter of the F.Y 2022-23 along with the Performance Report of State Level Screening Committee (SLSC), Standing Committee (SC) and Directorate General of Anti- Profitteering (DGAP) for 3rd quarter and 4th quarter of the F.Y 2022-23 for the information of the Council.

Decision: The Council took note of the same and approved the Agenda.

14. Agenda 13- Request for extension of due dates for filing GSTR-7, GSTR-1 & GSTR-3B for the month of April, May and June 2023 and extension of Amnesty Schemes in the State of Manipur.

14.1 The Pr. Commissioner, GST Policy stated that a request has been received from State of Manipur for extension of due dates for filing of FORM GSTR 7, FORM GSTR-1 and FORM GSTR-3B for the months of April, May and June 2023 till 31.07.2023 for taxpayers of Manipur, due to prevailing law-

and-order situation in the State. He informed that already, extension of due dates for filing of FORM GSTR 7, FORM GSTR-1 and FORM GSTR-3B for the months of April 2023 and May 2023 has been granted till 30th June 2023.

14.2 He also informed that State of Manipur has also requested for extension of the Amnesty schemes announced in the last Council meeting till 31st July 2023 in State of Manipur. He mentioned that these amnesty schemes were notified through notifications dated 31st March, 2023, on basis of the recommendations of GST Council made in 49th meeting, and the compliances as per the said amnesty schemes were to be done by 30th June, 2023. The details of amnesty schemes are 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;

14.3 He also added that similar representations for extension of date of amnesty schemes have also been received from various other trade associations from other parts of the countries also.

14.4 He informed that the feasibility of implementing these requests was got examined through GSTN (Goods and Services Tax Network). GSTN has informed that while they can quickly make changes on an all-India basis for the extension of Amnesty schemes, implementing it specifically for a particular State would require more time due to coding requirements.

14.5 The issue was deliberated in Officers' meeting held on 10th July 2023 and it was recommended by the Officers to extend the due dates for filing of FORM GSTR 7, FORM GSTR-1 and FORM GSTR-3B for the months of April, May and June 2023 till 31.07.2023 for the taxpayers of State of Manipur. The Officers further recommended that the Amnesty schemes notified vide notifications dated 31.03.2023, as detailed in the Agenda, may be extended till 31st August, 2023 for all taxpayers across the country.

Decision: The Council agreed with the said recommendation made by the Officers in the Officers' meeting.

15. Agenda Item 14: Review of the Revenue position under Goods and Service Tax

15.1 The Secretary presented the agenda on review of revenue position under GST and informed the Council that there were press releases from time to time indicating the revenue position. The Secretary to the Council informed that there is growth in the revenue of about 12% annually.

15.2 The Director (State Taxes), DoR stated that the average monthly collection of GST comes to about Rs. 1.70 Lakh Crore. Regarding unsettled IGST, the Director (State Taxes), DoR informed that compared to last year this year the balance is negative. However, the situation was improving. The Compensation Account was also in negative.

15.3 The Secretary informed the Council that the Compensation amount to all the States who had submitted AG Certificate had been released and there was no pendency. The Secretary requested the other States who had not submitted their AG Certificates to submit it on priority so that their payments could also be released in time.

15.4 The Hon'ble Member from Telangana stated that their IGST settlement and Compensation payment were still pending. To this, the Director (State Taxes), DoR informed that the amount as per the original AG Certificate submitted by the State had been released. The amount as per revised AG Certificate would be released in due course as and when revised Certificate was received in DoR. Further, regarding IGST Settlement, the Director (State Taxes), DoR informed that they were facing certain accounting issues. Those issues were discussed with Pr. CCA, CBIC. The amount due under IGST Settlement would be released after resolution of the accounting issues.

15.5 The Hon'ble Member from Andhra Pradesh also pointed out similar issue for the Financial Year 2018-19 and 2019-20. The Director (State Taxes), DoR informed that CAG had certified the amount but the Certificate was yet to be received by DoR. The due amount would be released after receipt of the Certificate.

16. Agenda 15: Any other agenda with the permission of the Chairperson

16.1 The Hon'ble Member from Delhi brought to attention concerns over recent notification including Goods and Services Tax Network (GSTN) under the purview of the Prevention of Money-laundering Act (PMLA) without any formal discussion in the GST Council. The Hon'ble Member requested the Chairperson to take up the matter for discussion.

16.2 The Hon'ble Member of Tamil Nadu objected the notification issued by Union Government on PMLA that it is against the interests of traders and against the basic objective of decriminalizing violations under the Goods and services Tax Act. This will affect traders across the country. Tamil Nadu is opposed to this.

16.3 The Hon'ble Member from Punjab also requested the Council to discuss the matter and address the apprehensions of the trade regarding the Notification.

16.4 The Hon'ble Member from the West Bengal enquired about the necessity of publishing the notification. She stated that law enforcing agencies could have shared the data related to any fraud detection without even having any notification brought to that effect. Therefore, this matter should have necessarily been discussed in the Council before notifying anything that affects GST agencies.

16.5 The Hon'ble Member from Rajasthan also requested the Council to take up the matter for discussion on an urgent basis. Any defaults in tax payments were already being investigated by GST authorities and bringing enforcement of laws like PMLA in taxation matters would further create fear among traders.

16.6 The Hon'ble Member from Telangana informed the Council that there were many apprehensions among the industry members about the notification. These apprehensions should be addressed by way of an Agenda or a GoM might be constituted for deeper analysis. The matter may then be taken up in the next Council meeting and the implementation of the notification be deferred till that time.

16.7 The Hon'ble Member from Karnataka stated that since the issue involved sharing of data with GSTN, it was incumbent upon the Council to discuss the matter.

16.8 The Secretary to the Council clarified that the Notification under scrutiny is under Prevention of Money Laundering Act and is not under GST law. Secondly, the purpose of the notification was to

equip and empower tax administration. As per the notification, Director, Financial Intelligence Unit would share information with GSTN regarding suspicious transactions filed by financial institutions. He read out the provisions of section 66, PMLA under which notification was issued and clarified that under these provisions of the Act, GSTN would only get information and the said reaction does not mandate GSTN to share any information. Such information shared by FIU would be further shared with concerned State and Central GST authorities and that information would empower the authorities to decide further course of action depending on merits of the case. Thirdly, this information was not circulated by Directorate of Enforcement but Director, FIU whose duty was to collect information regarding suspicious persons and suspicious transactions and communicate it to law enforcing agencies including ED, CBI, State Police, income tax and GSTN. This information was already being shared with about 30 other law enforcing agencies and the facility of sharing was being extended to GSTN so that the information could be shared with State and Central authorities too. Instead of sharing this information with each State or Central zone separately, the information would be shared with GSTN which was a common node for all tax agencies. In light of the discussions, it might be concluded that the notification does not give extraordinary powers to the tax authorities.

16.9 The Hon'ble Member from Maharashtra apprised the Council that no representations raising objections against the notification were received from any association in the State of Maharashtra. The Hon'ble Member highlighted that since the inception of the law, 5000 cases had been registered for the period 2005 to 2023. 2200 cases were registered between 2005 and 2014 while 2800 cases were registered between 2014 and 2023. Further, the total number of registrations in GST are 1 Crore 40 lakh approximately and the number of cases of violation were 5000 only.

16.10 The Hon'ble Member from Chhattisgarh pointed out that when PML Act was brought into effect, its preamble quoted the obligation of the country under United Nation Convention under which it was adopted. So, it was not foreseen at that time that such laws had something to do with tax regimes like GST. The aim was to target illicit drug trafficking, destabilization of the country, etc.

16.10 The Secretary to the Council reiterated that the provisions in the notification were not meant for empowering any Central tax agency with extraordinary powers. The information would be shared by FIU with GSTN electronically. The information would, further, be shared with Central and State GST authorities and it would be upon them to decide if any action was to be initiated.

17. In the end, the Secretary thanked the Union Finance Minister, the MoS, all the Members of the Council, and all the officers who had come from States, Centre, GSTN and the officers from Secretariat.

List of Hon'ble Ministers from States/UTs who participated in the 50th Meeting of the GST Council held on 11th July, 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	Arunachal Pradesh	Shri Chowna Mein	Hon'ble Deputy Chief Minister-cum-Finance Minister
5	Assam	Smt. Ajanta Neog	Finance Minister
6	Chhattisgarh	Shri T.S.Singh Deo	Deputy Chief Minister
7	Delhi	Smt. Atishi Marlena	Finance Minister
8	Goa	Shri Mauvin Godinho	Minister for Industries, Transport, Panchayati Raj and Protocol
9	Gujarat	Shri Kanubhai Desai	Minister for Finance
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	Jharkhand	Dr. Rameshwar Oraon	Minister for Finance, Commercial Taxes and Food, Public Distribution and Consumer Affairs
13	Karnataka	Shri Krishna Byre Gowda	Minister for Revenue Department
14	Kerala	Shri K. N. Balagopal	Finance Minister
15	Maharashtra	Shri Sudhir Mungantiwar	Minister for Forest and Cultural Affairs
16	Manipur	Dr. Sapam Ranjan Singh	Minister for Medical, Health & Family Welfare Department and Publicity & Information Department

17	Meghalaya	Shri Conrad K. Sangma	Chief Minister
18	Meghalaya	Shri.A.T. Mondal	Cabinet Minister, Community & Rural Development, Power Department, Taxation Department
19	Nagaland	Shri K.G Kenye	Minister for Power and Parliament Affairs
20	Odisha	Shri Bikram Keshari Arukha	Minister for Finance
21	Punjab	Shri Harpal Singh Cheema	Finance Minister
22	Puducherry	Shri K. Lakshminarayanan	Minister for Public Works
23	Rajasthan	Shri Shanti Kumar Dhariwal	Minister of Local Self-Government, Urban Development and Housing, Law and Legal Affairs, Legal Consultancy Office, Parliamentary Affairs, Elections
24	Sikkim	Shri B. S. Panth	Minister of Tourism & Civil Aviation and Commerce & Industries
25	Tamil Nadu	Shri Thangam Thennarasu	Minister for Finance and Human Resources Management
26	Telangana	Shri T. Harish Rao	Minister for Finance, Health, Medical & Family Welfare
27	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs
28	Uttarakhand	Shri Premchand Aggarwal	Minister of Finance, Urban Development, Housing, Legislative and Parliamentary Affairs, Reorganisation and Census
29	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Finance

List of Officers from Centre and the States/UTs who participated in the 50th Meeting of the GST Council held on 11th July, 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	Shri Shashank Priya	Member (GST),CBIC
5	Government of India	Shri Vivek Ranjan	Member (Tax Policy)
6	Government of India	Shri Pankaj Kumar Singh	Additional Secretary (GST Council Secretariat)
7	Government of India	Shri Sanjay Mangal	Principal Commissioner
8	GSTN	Shri Manish Kumar Sinha	CEO
9	GSTN	Shri Dheeraj Rastogi	EVP
10	Government of India	Ms. Limatula Yaden	Joint Secretrary
11	Government of India	Ms. Ashima Bansal	Joint Secretary
12	Government of India	Ms. B.Sumidaa Devi	Joint Secretary
13	Government of India	Shri Surjit Bhujabal	Principal Director General, DGGI
14	Government of India	Shri Nitish Kumar Sinha	Principal Additional Director General, DGGI (Hqrs.)
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 Deepak Kapoor	OSD to Revenue Secretary

20	Government of India	Shri D. P. Misra	OSD to Chairman, CBIC
21	Government of India	Dr N Gandhi Kumar	Director (State Taxes)
22	Government of India	Shri Alok Kumar	Additional Commissioner
23	Government of India	Shri Raghavendra Pal Singh	Additional Commissioner
24	Government of India	Dr. Gurbaz Sandhu	Additional Commissioner
25	Government of India	Shri Pramod Kumar	OSD Commissioner in-situ
26	Government of India	Ms Puneeta Bedi	OSD
27	Government of India	Shri Rakesh Dahiya	Deputy Secretary
28	Government of India	Ms. Amreeta Titus	Deputy Secretary
29	Government of India	Shri Nitesh Gupta	Deputy Commissioner
30	Government of India	Shri Amit Samdariya	Deputy Commissioner
31	Government of India	Ms. Neha Yadav	Deputy Commissioner
32	Government of India	Ms. Soumya	Deputy Commissioner
33	Government of India	Shri Manish Deo Mishra	Deputy Commissioner
34	Government of India	Shri Raushan Kumar	Deputy Commissioner
35	Government of India	Shri Sunil Kumar	Under Secretary
36	Government of India	Shri Vikram Wanere	Under Secretary
37	Government of India	Shri Rahul Kumar	Under Secretary
38	Government of India	Ms. Smita Roy	Technical Officer
39	Government of India	Ms. Anna Sosa Thomas	Technical Officer
40	Government of India	Shri Nitin Gupta	Technical Officer
41	Government of India	Shri Sameer Shivajirao Patil	Technical Officer
42	Government of India	Dr. Sorabh Badaye	Deputy Director

43	Government of India	Shri Ashok Kumar	Inspector
44	Government of India	Shri Anil Bhandari	Inspector
45	GSTN	Shri Naveen Agarwal	Deputy Commissioner
46	Government of India	Dr. Pragya Paliwal Gaur	Additional Director General
47	Government of India	Shri Kush Mohan Nahar	Media & Communication Officer
48	Government of India	Ms. Manju Kumar	Chief Postmaster General
49	Government of India	Ms. Binti Choudhury	Director (Headquarter & Operations)
50	Government of India	Shri Amit Kumar	ADM (PLI & Philately)
51	Government of India	Shri Sachin Kashyap	Inspector of Posts (Philately)
52	Government of India	Shri Rakesh Kumar	Inspector of Posts (Philately)
53	Government of India	Shri Aman Prakash Gaurav	PRO
54	Government of India	Shri Rajeev Ranjan Bharti	Postal Assistant
55	GST Council Secretariat	Shri Kshitendra Verma	Director
56	GST Council Secretariat	Shri S.S.Shardool	Director
57	GST Council Secretariat	Shri Joginder Singh Mor	Under Secretary
58	GST Council Secretariat	Ms. Reshma R. Kurup	Under Secretary
59	GST Council Secretariat	Ms. Priya Sethi	Superintendent
60	GST Council Secretariat	Shri Dharambir	Superintendent
61	GST Council Secretariat	Shri Irfan Zakir	Superintendent
62	GST Council Secretariat	Shri Naveen Kumar	Superintendent

63	GST Council Secretariat	Shri Sachin Goel	Superintendent
64	GST Council Secretariat	Ms. Ambika Rani	Superintendent
65	GST Council Secretariat	Shri Niranjan Kishore	Superintendent
66	GST Council Secretariat	Shri Rakesh Joshi	Superintendent
67	GST Council Secretariat	Shri Vijay Malik	Inspector
68	GST Council Secretariat	Shri Padam Singh	Inspector
69	GST Council Secretariat	Shri Rohit Sharma	Inspector
70	GST Council Secretariat	Shri Ashwani Sharma	ASO
71	GST Council Secretariat	Shri Karan Arora	ASO
72	GST Council Secretariat	Shri Pankaj Dhaka	Tax Assistant
73	GST Council Secretariat	Shri Paresh Garg	Tax Assistant
74	GST Council Secretariat	Shri Shyam Bihari Meena	Tax Assistant
75	GST Council Secretariat	Shri Vikas Kumar	Tax Assistant
76	Andhra Pradesh	Shri N. Gulzar	Secretary Finance(CT)
76	Andhra Pradesh	Shri N. Gulzar	Secretary Finance(CT)
77	Andhra Pradesh	Shri M. Girija Sankar	Chief Commissioner(ST)
78	Andhra Pradesh	Shri J. V. M. Sarma	Additional Commissioner(ST) Policy
79	Arunachal Pradesh	Ms. Y. W. Ringu	Secretary (Tax & Excise)
80	Arunachal Pradesh	Shri Lobsang Tsering	Commissioner (Tax & Excise)

81	Arunachal Pradesh	Shri Tapas Dutta	Deputy Commissioner-cum- SNO (GST)
82	Assam	Shri Rakesh Agarwalla	Principal Commissioner of State Tax
83	Bihar	Dr. Pratima	Commissioner cum Secretary Commercial Taxes
84	Bihar	Shri Arun Kumar Mishra	Tax Expert Commercial Taxes
85	Bihar	Ms. Ruby	Joint Secretary Commercial Taxes
86	Bihar	Shri Binod Kumar Jha	Additional Commissioner State Tax
87	Chandigarh	Shri Vijay Namdeorao Zade	Finance Secretary-cum-Secretary Excise & Taxation
88	Chandigarh	Shri Alok Passi	Assistant Excise and Taxation Commissioner
89	Chhattisgarh	Shri Himshikhar Gupta	Secretary, Commercial Tax (State Tax)
90	Chhattisgarh	Shri Ritesh Kumar Agrawal	Commissioner of State Tax
91	Chhattisgarh	Shri Tarun Kumar Kiran	Deputy Commissioner
92	Chhattisgarh	Shri Anand Sagar Singh	PA to Hon'ble Minister
93	Delhi	Shri A Anbarasu	Principal Commissioner (State Tax)
94	Delhi	Shri Awanish Kumar	Special Commissioner (State Tax)
95	Delhi	Shri Atish Kumar	Joint Commissioner (State Tax)
96	Goa	Shri S.S.Gill	Commissioner of State Tax
97	Goa	Shri Vishant S.N. Gaunekar	Additional Commissioner of State Tax
98	Gujarat	Shri J.P. Gupta	Additional Chief Secretary, Finance Department
99	Gujarat	Shri Samir Vakil	Chief Commissioner of State Tax (I/c)
100	Gujarat	Shri Riddhesh Raval	Joint Commissioner of State Tax
101	Haryana	Shri Devinder Singh Kalyan	Principal Secretary to Government Haryana, Excise and Taxation Department.

102	Haryana	Shri Siddharth Jain	Additional Commissioner, GST, Excise and taxation Department
103	Himachal Pradesh	Shri Yunus	Commissioner State Taxes and Excise
104	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner State Taxes and Excise
105	Jammu and Kashmir	Shri Santosh D. Vaidya	Principal Secretary, Finance Department
106	Jammu and Kashmir	Shri Shakeel Maqbool	Additional Commissioner
107	Jharkhand	Ms. Vipra Bhal	Secretary, Commercial Taxes
108	Jharkhand	Shri Santosh Kumar Vatsa	Commissioner, Commercial Taxes
109	Karnataka	Ms. C. Shikha	Commissioner Commercial Tax
110	Karnataka	Dr. Ravi Prasad	Additional Commissioner CT
111	Kerala	Shri Ajit Patil	Commissioner, State GST Department
112	Kerala	Shri Abraham Renn S	Additional Commissioner-1
113	Kerala	Dr. Shyjan D	PS to Hon'ble Minister for Finance
114	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner of Commercial Tax
115	Madhya Pradesh	Shri Manoj Kumar Choubey	Additional Commissioner, State Tax
116	Maharashtra	Ms Shaila A	Principal Secretary (Financial Reforms)
117	Maharashtra	Shri Rajeev Mital	Commissioner of State Tax
118	Maharashtra	Shri Manoj Kumar Narayanwal	Deputy Commissioner
119	Maharashtra	Shri Sudhir Rathod	OSD to the Hon'ble Minister
120	Maharashtra	Shri Rahul Gangurde	OSD to the Hon'ble Minister
121	Maharashtra	Shri Babasaheb Gore	OSD to the Commissioner of State Tax
122	Maharashtra	Anju Nimsarkar	Information Officer
123	Manipur	Ms. Mercina R. Panmei	Commissioner of Taxes
124	Manipur	Shri Y. Indrakumar Singh	Assistant Commissioner of Taxes

125	Meghalaya	Shri Ramakrishna Chitturi	Commissioner of Taxes
126	Meghalaya	Shri L Khongsit	Additional Commissioner of Taxes
127	Meghalaya	Shri V R Challam	Deputy Commissioner of Taxes
128	Meghalaya	Shri Sanjay Goyal	Commissioner & Secretary ERTS
129	Meghalaya	Shri Shanborlang Warjri	Deputy Secretary CM Office
130	Meghalaya	Shri Mukesh Kumar	OSD to CM
131	Meghalaya	Shri Saidul Khan	OSD to CM
132	Mizoram	Shri R. Zosiamliana	Commissioner of State Tax
133	Mizoram	Shri Hrangthanmawia	Assistant Commissioner of State Taxes
134	Nagaland	Shri C Lima Imsong	Additional Commissioner of State Taxes
135	Odisha	Shri Nihar Ranjan Nayak	Additional Commissioner of CT & GST
136	Odisha	Shri Saumyajit Rout	Joint Secretary, Finance Department
137	Odisha	Shri Dinakrushna Kar	PS to Hon'ble Minister
138	Punjab	Shri Vikas Partap	Financial Commissioner (Taxation)
139	Punjab	Shri Kamal Kishor Yadav	Commissioner of State Tax
140	Punjab	Shri Ravneet Khurana	Additional Commissioner of State Taxes (Audit)
141	Puducherry	Shri P. Jawahar	Commissioner -cum- Secretary to Govt. (Finance)
142	Puducherry	Shri L. Mohamed Mansoor	Commissioner of State Tax
143	Rajasthan	Dr Ravi Kumar Surpur	Chief Commissioner, State Tax
144	Rajasthan	Shri Arvind Mishra	Additional Commissioner, State Tax
145	Sikkim	Shri Manoj Rai	Commissioner (Commercial Taxes)
146	Tamil Nadu	Shri T.Udhayachandran	Principal Secretary, Finance
147	Tamil Nadu	Shri Dheeraj Kumar	Principal Secretary/Commissioner of Commercial Taxes

148	Tamil Nadu	Shri S. Subash Chandra Bose	Joint Commissioner (Policy & Planning)
149	Telangana	Ms. Neetu Prasad	Commissioner of Commercial Taxes
150	Telangana	Shri N Sai Kishore	Additional Commissioner (ST)(Legal)
151	Telangana	Ms. K Rupa Sowmya	Deputy Commissioner (ST) EIU
152	Tripura	Ms. Rakhi Biswas	Chief Commissioner of State Tax
153	Tripura	Shri Ashin Barman	GST Nodal Officer
154	Uttarakhand	Shri Dilip Javalkar	Secretary Finance
155	Uttarakhand	Dr. Ahmad Iqbal	Commissioner of State Tax
156	Uttarakhand	Shri B. S. Nagnyal	Additional Commissioner
157	Uttarakhand	Shri Anurag Mishra	Joint Commissioner
158	Uttar Pradesh	Shri Nitin Ramesh Gokarn	Additional Chief Secretary, State Tax
159	Uttar Pradesh	Ms. Ministhy S	Commissioner, State Tax
160	Uttar Pradesh	Shri Paritosh Kumar Mishra	Deputy Commissioner, State Tax
161	Uttar Pradesh	Shri Amit Pandey	P.S. to Hon'ble Finance Minister, UP
162	West Bengal	Dr. Manoj Pant	Additional Chief Secretary, Finance Department
163	West Bengal	Shri Khalid Aizaz Anwar	Commissioner of State Tax
164	West Bengal	Shri Rajib Sankar Sengupta	Senior Joint Commissioner of Revenue
165	West Bengal	Shri Shantanu Naha	OSD to Hon'ble Minister

Annexure-3



**Summary of discussions in Officers'
Meeting held on
10th July 2023**

Agenda No	Issue/Proposal	Status during Officers Meeting
3(i) [Vol 1- Pg. 105-108]	<p>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</p> <ul style="list-style-type: none"> 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 generation of e-way bills for intra-State movement of gold and precious stones under Chapter 71, for implementing the said recommendations of GoM. 	Agreed
3(ii) [Vol 1- Pg. 109-129]	<p>Capacity based taxation and Special Composition Scheme in certain Sectors in GST</p> <ul style="list-style-type: none"> issuance of a notification under section 148 of CGST Act prescribing the special procedure in respect of registration of machines used in manufacturing of tobacco, pan masala and similar items and special monthly returns to be filed by manufacturers of these items. insertion of a new section 122A in CGST Act to provide for penalty for non-declaration of machines by such manufacturers. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(ii) [Vol 1- Pg. 109-129]	<ul style="list-style-type: none"> Special registration of machines and filing of special monthly returns to be done on the common portal. Notifying amendment in Section 16 of IGST Act through section 123 of Finance Act 2021 with effect from 01.10.2023 and notifying the above mentioned commodities as well as mentha oil under the proposed section 16(4) of IGST Act as goods on whose supply IGST refund route shall not be available. 	
3(iii) [Vol 1- Pg. 130-138]	<p>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</p> <ul style="list-style-type: none"> in cases of wrong availment of IGST credit, the balance of input tax credit (ITC) in electronic credit ledger, under the heads of IGST, CGST and SGST taken together (and not of IGST head only), has to be taken in consideration while calculating the interest liability under section 50(3) of CGST Act, read with rule 88B of CGST Rules. credit of compensation cess in electronic credit ledger cannot be taken into consideration for calculation of interest under rule 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(iv) [Vol 1- Pg. 139- 142]	Issues pertaining to interpretation of Section 10 of IGST Act, 2017 <ul style="list-style-type: none"> No need for amendment in section 10 of IGST Act for the supplies made to registered persons. For the supplies made to unregistered persons, insertion of a new clause (ca) after clause (c) of sub-section (1) of section 10 of the IGST Act providing that PoS be: <ul style="list-style-type: none"> the location as per the address of the said person recorded in the invoice issued in respect of the said supply; and the location of the supplier, where the address of the said person is not recorded in the invoice. 	Agreed
3(v) [Vol 1- Pg. 143- 146]	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 <ul style="list-style-type: none"> 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. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(vi) [Vol 1- Pg. 147- 162]	Clarification on refund related issues <ul style="list-style-type: none"> Issue 1: Clarification on Refund of accumulated input tax credit under Section 54(3) on the basis of ITC available as per FORM GSTR 2B <ul style="list-style-type: none"> w.e.f. 01.01.2022, availment of refund of the accumulated ITC under section 54(3) for a tax period may be restricted to the ITC on inward supplies as reflected in FORM GSTR-2B of the said tax period or of any previous tax period. Issue 2: Requirement of the undertaking in FORM RFD-01 inserted vide para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 <ul style="list-style-type: none"> Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 & undertaking in FORM GST RFD-01 may be amended to delete the references to the omitted provisions i.e. Section 42, FORM GSTR-2 & GSTR-3 and amendment in Section 41. Consequently, Annexure-A to Circular No. 125/44/2019-GST dated 18.11.2019 may be amended to the effect that. Issue 3: Determination of value of adjusted total turnover in the formula under Rule 89(4) <ul style="list-style-type: none"> Consequent to Explanation having been inserted in rule 89(4) of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of export goods to be included while calculating “adjusted total turnover” in the formula under rule 89(4) will be determined as per the said explanation. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(vi) [Vol 1- Pg. 147- 162]	<ul style="list-style-type: none"> ▪ Issue 4: 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 <ul style="list-style-type: none"> ▪ the term "Net ITC" 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; ▪ 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; ▪ ITC attributable to the subsidy cannot be removed from the calculation of 'Net ITC', or a notional amount cannot be added while calculating the 'tax payable on inverted rated supply' in the said formula under rule 89(5). ▪ Issue 5: admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A <ul style="list-style-type: none"> ▪ substantive benefits of refund accruing on account of zero-rated supply cannot be denied due to delayed export or delayed receipt of payment for export, as the case may be; ▪ refund of IGST paid in compliance of the provisions of sub-rule (1) of rule 96A of CGST Rules may also be given, but no refund of interest paid can be given in such cases. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(vii) [Vol 1- Pg. 163- 169]	<p>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</p> <ul style="list-style-type: none"> ▪ Since rule 36(4) of CGST Rules providing for restriction in availment of ITC vis a vis that available in FORM GSTR-2A 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; ▪ For the period from 09.10.2019 till 31.12.2021, guidelines vide Circular No. 183/15/2022-GST dated 27.12.2022 shall be applicable for verification of the condition of Section 16(2)(c) of CGST Act, subject to the condition that availment of ITC shall not exceed the limit prescribed vide rule 36(4), as applicable during the said period. 	Agreed
3(viii) [Vol 1- Pg. 170- 174]	<p>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</p> <ul style="list-style-type: none"> ▪ Insertion of new rule 88D in CGST Rules for system based intimation to the registered person about 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. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(viii) [Vol 1- Pg. 170- 174]	<ul style="list-style-type: none"> Insertion of a new clause (c) 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. Insertion of FORM GST DRC-01C in CGST Rules as required under sub-rule (1) of the proposed rule 88D. To begin with, system based intimation under proposed rule 88D to the concerned registered person may be given in those cases where difference between the input tax credit availed in FORM GSTR-3B & that available as per FORM GSTR-2B is more than 20% as well as more than Rs. 25 lakhs. 	Agreed
3(ix) [Vol 1- Pg. 175- 177]	<p>Procedure for Recovery of Tax and Interest in terms of Rule 88C(3)</p> <ul style="list-style-type: none"> insertion of a new Rule 142B in the CGST Rules and insertion of a new FORM GST DRC-01D to provide for creation of liability in Electronic Liability Register by the proper officer in respect of - <ul style="list-style-type: none"> the amount intimated under rule 88C which is not paid by the registered person and for which no explanation has been furnished or the explanation furnished is not satisfactory; and the amount of interest 	Agreed . Officer from Gujarat proposed that words “ or interest ” may be inserted in proposed sub-rule(3) of rule 142B after the words “tax”, which was agreed by the officers.

Agenda No	Issue/Proposal	Status during Officers Meeting
3(x) [Vol 1- Pg. 178- 189]	<p>Annual Returns for FY 2022-23</p> <ul style="list-style-type: none"> 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. Separate rows to be provided for the new tax rate of 6% for brick kiln taxpayers in table 9, 11 and Pt. V of FORM GSTR-9C. 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. 	Agreed
3(xi) [Vol 1- Pg. 190- 194]	<p>Amendment in CGST Rules, 2017 regarding registration</p> <ul style="list-style-type: none"> Amendment in rule 10A to provide that the details of bank account may be required to be furnished within 30 days of grant of registration, or before filing of statement of outwards supply under section 37 of CGST Act in FORM GSTR-1/ IFF, which ever is earlier. Amendment to sub-rule (2A) of rule 21A to provide for system based suspension of the registration 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. Insertion of 3rd proviso in sub-rule (4) of rule 21A to provide for automatic revocation of suspension upon compliance with provisions of rule 10A. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xi) [Vol 1- Pg. 190- 194]	<ul style="list-style-type: none"> Amendment to sub-rule (6) of rule 59 to provide that in cases where a registered person has not furnished details of a valid bank account under rule 10A, the said registered person may not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using IFF. Amendment in rule 9(1) and rule 25 to do away with the requirement of physical verification of business premises in the presence of the applicant and to provide for physical verification in rule 25 in high risk cases even where Aadhaar has been authenticated. 	
3(xi(a)) [Vol III- Pg. 7-9]	<p>Pilot Project for biometric-based Aadhaar authentication of registration applicants in Puducherry</p> <ul style="list-style-type: none"> In order to implement the said biometric-based Aadhaar authentication for registration applicants in Puducherry, the following notifications may be required to be issued: <ul style="list-style-type: none"> The State of Puducherry to substitute rule 8(4A) and amendment of rule 8(5) & rule 9 of Puducherry SGST Rules on the lines of corresponding amendments in CGST Rules vide vide notification no. 26/2022-CT dated 26.12.2022 and notification no. 04/2023-Central Tax dated 31.03.2023; The Central Government 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. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xi(a)) [Vol III- Pg. 7-9]	<ul style="list-style-type: none"> Council may authorize the Chairperson to extend the said pilot project, if required, in other States and/ or Union territories, who may be willing to conduct pilot for such biometric authentication of Aadhaar. Amendments made in rule 8(5), rule 9(1) and 9(2) of CGST Rules vide Notification No. 26/2022-CT dated 26.12.2022, may be notified by all States in their SGST Rules to provide for mandatory physical verification of registration applicants in high risk Aadhaar authenticated cases. 	
3(xii) [Vol 1- Pg. 195- 201]	<p>Clarification on TCS liability under Sec 52 of the CGST Act, 2017, in case of multiple E-commerce Operators (ECOs) in one transaction</p> <ul style="list-style-type: none"> 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. where the Supplier-side ECO is himself the supplier of the said supply, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the Buyer-side ECO. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xiii) [Vol I- Pg. 202- 208]	Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period <ul style="list-style-type: none"> 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 GST is chargeable on such replacement of parts and/ or repair service and also, no reversal of input tax credit is required to be made by the manufacturer. Clarification regarding the taxability and requirement of availment/ reversal of ITC in situations where distributor provides replacement of parts and/or repair services to the customer, as part of warranty on behalf of the manufacturer. 	Agreed
3(xiv) [Vol I- Pg. 209- 214]	Amendments in CGST Rules consequent to amendment in CGST Act vide Finance Act 2023 <ul style="list-style-type: none"> insertion of Explanation 3 after rule 43 of CGST Rules <ul style="list-style-type: none"> to prescribe that the value of activities or transactions in respect of paragraph 8(a) of Schedule III of the CGST 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. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xiv) [Vol I- Pg. 209- 214]	<ul style="list-style-type: none"> Amendment in rule 162 <ul style="list-style-type: none"> insertion of a sub-rule (3A) in rule 162 of CGST Rules to prescribe the compounding amount for various offences under section 132 of CGST Act. amendment of sub-rule (3) of rule 162 to omit the condition that the applicant has cooperated in the proceedings. Insertion of rule 163 <ul style="list-style-type: none"> insertion of rule 163 in CGST Rules to implement the provisions of the newly inserted section 158A in CGST Act regarding consent based sharing of information of registered persons under GST. issuance of a notification under section 158A of CGST Act for notifying "Account Aggregators" as the systems with which information is to be shared by the common portal. 	Agreed. The Council may like to fix 01.10.2023 as the date on which the provisions of Finance Act, 2023 pertaining to GST shall come into effect. However, the provisions of Finance Act 2023 pertaining to GST Appellate Tribunal may be notified by the Centre with effect from 01.08.2023 .
3(xv) [Vol III- Pg. 10-25]	Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 <ul style="list-style-type: none"> rules for governing appointment and conditions of President and Members of the proposed GST Appellate Tribunal in form of GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2023. the said rules may be notified after notification of the relevant provisions of the Finance Act, 2023. 	Agreed. The officers after discussions recommended the following changes: (i) In sub-rule (5) of rule (3), the words " as well as adjudicating " may be replaced with " and "; (ii) In the Annexure-I, S.No. 9 may be deleted.

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xvi) [Vol III- Pg. 26- 31]	Seeking clarity on taxability of share capital held in subsidiary company by the parent company <ul style="list-style-type: none">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.	Agreed
3(xvii) [Vol III- Pg. 32-44]	Proposal for amendments to CGST Rules, 2017	
	Rule/FO RM	Proposal
	Omission of clause (c) of Explanation (1) to Rule 43	Reversal of ITC in respect of supply of services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is not required w.e.f. 01.10.2022.
	Proviso to rule 46(f)	to provide that only name of the State of the recipient may be sufficient to be provided on the tax invoice for deeming as address on record, and that name, address and PIN code of the recipient may not be required to be declared on the tax invoice where any taxable services is supplied by or through an ECO or by a supplier of OIDAR services to an unregistered recipient.

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xvii) [Vol III- Pg. 32-44]	Proposal for amendments to CGST Rules, 2017	Agreed.
	Rule/FO RM	Proposal
	Rule 64 and FORM GSTR-5A	To also include details of supplies made by the OIDAR service provider located outside India to registered persons in India.
	Rule 89(1)	To provide that casual taxable person or a non-resident taxable person can claim refund of advance tax amount in the nature of excess balance in electronic cash ledger, after the last return required to be furnished by him has been so furnished.
	Rule 89(2)(k)	To allow the taxpayer to file a claim of refund 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 under the category 'Excess Payment of Tax'
	Rule 96(2)	Omission of first and second proviso to Rule 96(2) of CGST Rules as they serve no purpose in light of the amendments in section 37 and 39 of CGST Act.
	Rule 108 & 109	To provide for filing of appeal manually under certain specified circumstances
	FORM GSTR-3A	Amendment in FORM GSTR-3A for issuance of notice to the registered taxpayers for their failure to furnish Annual Return in FORM GSTR-9 or FORM GSTR-9A
		Officer from Maharashtra suggested that the words "or due to non-availability of the facility on the common portal" may be deleted from the proposed provisos in rule 108(1) and rule 109(1), which was agreed to by the officers.

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xviii) [Vol III- Pg. 45-49]	<p>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</p> <ul style="list-style-type: none"> issuance of a notification to provide for a special procedure under section 148 of CGST Act for filing of manual appeals by the taxpayers and tax authorities against such orders, along with extension of time limit to file such appeals. 	Agreed
3(xix) [Vol III- Pg. 50-58]	<p>Issues pertaining to ISD mechanism and taxability of services provided by one distinct person to another distinct person</p> <p>i) For common input services procured from third party:</p> <p>(a) To clarify through a circular that:</p> <ul style="list-style-type: none"> ISD mechanism is not mandatory as per the present provision of GST law for passing ITC in respect of common input services procured by HO from a third party which are attributable to both HO and BO or exclusively to one or more BOs; Registration as ISD mandatory if ITC is to be distributed through ISD mechanism; Distribution of ITC to a BO through ISD mechanism or through issuance of invoice under section 31 only if the said services are actually being supplied to the concerned BO. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xix) [Vol III- Pg. 50-58]	<p>Issues pertaining to ISD mechanism and taxability of services provided by one distinct person to another distinct person</p> <p>(b) For future, ISD mechanism may be made mandatory prospectively by amendment in the law for distribution of ITC in respect of input services procured by HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, including in cases, where such input services are liable to tax on reverse charge basis. Amendment in GST law for the same to be formulated by the Law Committee.</p> <p>ii) For internally generated services:</p> <p>(a) To clarify through a circular that in cases where full input tax credit is available to the recipient:</p> <ul style="list-style-type: none"> 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. if the invoice is not issued with respect to any internally generated services by HO to 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 the said proviso. <p>(b) Law Committee to further deliberate the issue of taxability and valuation of such internally generated services in cases, where full input tax credit is not available to the recipient.</p>	<p>Agreed.</p> <p>The issue of valuation of internally generated services, where full ITC is not available to the recipient, was also discussed in the Officers' meeting.</p> <p>It was broadly discussed to clarify that in respect of such internally generated services, cost of salary of employees may not be mandatorily required to be included in the taxable value of supply of such services.</p>

Agenda No	Issue/Proposal	Status during Officers Meeting
13 [Vol III- Pg. 60-61]	<p>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.</p> <ul style="list-style-type: none"> due date of filing of GSTR-7, GSTR-1 & GSTR-3B can be extended on the portal for taxpayers of Manipur; it may not be possible for immediate extension of dates of amnesty scheme on the portal only for taxpayers of one State, as it will require coding in each of the functionalities for amnesty scheme; such extension of dates for amnesty schemes can, however, be done easily on the portal on All India Basis. 	<p>The issues was deliberated in the Officers' meeting and the following suggestions were made by the officers in the meeting:</p> <p>(i) Due date of filing of GSTR-1, GSTR-3B and GSTR-7 for months of April, May and June 2023 for taxpayers of Manipur may be extended till 31.07.2023</p> <p>(ii) Amnesty schemes notified vide notifications dated 31.03.2023 may be extended till 31.08.2023 All over India.</p>

Ratification of Notifications and Circulars

Agenda 2: Ratification of Notifications, Circulars etc. (1/3)

[Vol 1- Pg. 92-104]

Act/ Rules	Notifications/Circulars Nos.	Description/Remarks
CGST Act/ CGST Rules	Sixteen (16) Central Tax Notifications issued (No. 02/2023 to 17/2023) & Five (05) Central Tax (rate) Notifications issued (No. 01/2023 to 05/2023)	Amendments have been carried out in Rule 8 of CGST Rules and notifications have been issued to implement various decisions of GST Council taken in 49 th meeting. Some of the important notifications are: i. Extension of time limit for application for revocation of cancellation of registration. ii. Amnesty scheme for deemed withdrawal of assessment orders issued under Section 62. iii. Amnesty to GSTR-4, GSTR-9 and GSTR-10 non-filers. iv. Extension of limitation under Section 168A of CGST Act. v. to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Crore from 1st August 2023. vi. Extension of due dates for furnishing FORM GSTR-1, FORM GSTR-3B and FORM GSTR-7 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.
UTGST Act	Five (05) Union Territory Tax (rate) Notifications issued (No. 01/2023 to 05/2023)	Notifications to implement various decisions of GST Council taken in 49 th meeting

Agenda 2: Ratification of Notifications and Circulars (2/3)

[Vol 1- Pg. 92-104]

Act/ Rules	Notifications/Circulars Nos.	Description/Remarks
IGST Act	Five (05) Integrated Tax (rate) Notifications issued (No. 01/2023 to 05/2023)	Notifications to implement various decisions of GST Council taken in its 49 th meeting
Goods and Services Tax (Compensation to States) Act, 2017	One (01) Compensation Cess Notification issued (No. 01/2023) & Two (02) Compensation Cess (rate) Notifications issued (No. 01/2023 to 02/2023)	Notifications to implement various decisions of GST Council taken in its 49 th meeting
Circulars	One (01) Circular issued (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 49 th meeting.

Agenda 2: Ratification of notifications and circulars (3/3)

[Vol 1- Pg. 92-104]

- ❖ Some of these notifications and circulars have been issued **based on decisions of GST Implementation Committee (GIC)** taken between 49th GST Council meeting and the upcoming 50th GST Council meeting.
- ❖ The important decisions **taken by GIC** are as below :
 - Roll out of sixth phase of e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Cr.
 - 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.
 - Issue of seeking extension of 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.
 - Issue of seeking extension of due dates in filing of GSTR-1, GSTR-3B and GSTR-7 for months of April 2023 and May 2023 till 30th June, 2023 in the State of Manipur.
 - Extension of due date for furnishing of FORM GSTR-3B for month of May 2023 for tax payers in certain Districts of Gujarat due to Biparjoy Cyclone.
 - GST Data sharing request received from Department of Telecommunications, M/o Communications.
 - Nomination of officers for All India Co-ordination Committee as per Model All India GST Audit Manual.
 - Proposal for integration of GSTN's E-way bill system with ULIP.

Recommendations of the Law Committee

Law Committee Recommendations for Trade facilitation and Reducing litigation

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

[Vol 1- Pg. 130-138]

Issue:

- ❖ References received seeking 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 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 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 in the electronic credit ledger under 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.**

Proposal:

- ❖ LC has recommended to issue a circular clarifying that:
 - in cases of wrong availment of IGST credit, **the balance of input tax credit (ITC) in electronic credit ledger, under the heads of IGST, CGST and SGST taken together (and not of IGST head only), has to be taken in consideration while calculating the interest liability under section 50(3) of CGST Act, read with rule 88B of CGST Rules.**
 - **credit of compensation cess in electronic credit ledger cannot be taken into consideration for calculation of interest under rule 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.**

➤ This will help in bringing clarity and will reduce unnecessary litigation on the issue.

Agenda 3(vii) : Clarification for dealing with differences 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 (1/2)

[Vol 1- Pg. 163-169]

Issue:

- ❖ 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, FORM GSTR-2A of their recipients remained 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.
- ❖ Rule 36(4) was amended with effect from 1st January 2022 providing that ITC cannot be availed by the registered person in excess of the ITC made available in his FORM GSTR-2B.
- ❖ The procedure for verification of ITC availed by the registered persons in cases of difference in ITC availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A has been clarified for **FY 2017-18 and FY 2018-19** vide **Circular No. 183/15/2022-GST** dated 27th December, 2022.
- ❖ Various representations have been received from the trade as well as tax authorities seeking clarification regarding the manner of dealing with such discrepancies during the period from **01.04.2019 to 31.12.2021**.

Agenda 3(vii) : Clarification for dealing with differences 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 (2/2)

[Vol 1- Pg. 163-169]

Proposal:

- ❖ LC recommended to issue a circular detailing the procedure for verification of ITC availed by the registered persons in cases of such discrepancies during the period **from 01.04.2019 to 31.12.2021, inter alia providing that:**
 - Since rule 36(4) of CGST Rules providing for restriction in availment of ITC vis a vis that available in FORM GSTR-2A 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**;
 - For the period from **09.10.2019 till 31.12.2021**, guidelines vide Circular No. 183/15/2022-GST dated 27.12.2022 shall be applicable for verification of the condition of Section 16(2)(c) of CGST Act, subject to the condition that availment of ITC shall not exceed the limit prescribed vide rule 36(4), as applicable during the said period.
- This would provide clarity to the trade and the field formations and will reduce unnecessary litigation on the issue.

Agenda 3(x): Annual Returns for FY 2022-23

[Vol 1- Pg. 178-189]

Issue:

- ❖ **FORM GSTR-9 and FORM GSTR-9C for FY 2022-23** need to be notified at the earliest so that the taxpayers can comply without any delay.
- ❖ Government had introduced new tax rate of 6% for brick kiln taxpayers in FY 2022-23. Corresponding row for the said tax rate is not available in FORM GSTR-9C and needs to be provided.

Proposal:

- ❖ **LC recommended the following:**
 - As new tax rate of 6% for brick kiln taxpayers has been introduced 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**.
 - 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 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.
- This would benefit smaller taxpayers and will ease compliance under section 44 of CGST Act.

Agenda 3(xii): Clarification on TCS liability under Sec 52 of the CGST Act in case of multiple E-commerce Operators (ECOs) in one transaction

[Vol 1- Pg. 195-201]

Issue:

- ❖ 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 in case of multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC).

Proposal:

- ❖ **LC recommended to clarify 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.
 - **where the Supplier-side ECO is himself the supplier of the said supply**, the compliances under section 52 of CGST Act, including collection of TCS, is to be done **by the Buyer-side ECO**.
- ❖ LC also recommended that **notification under section 148 of CGST Act** proposed to be issued as per recommendations of the Council in **48th meeting**, also needs modification to cover such multiple ECOs situations.
- This would clarify the TCS liability in cases of multiple ECOs in one transaction.

Agenda 3(xiii): Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period (1/2)

[Vol 1- Pg. 202-208]

Issue:

- ❖ 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 customer.

Agenda 3(xiii): Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period (2/2)

[Vol 1- Pg. 202-208]

Proposal:

- ❖ **LC recommended issuance of a circular to inter alia:**
 - Clarify that 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 GST is chargeable on such replacement of parts and/ or repair service and also, no reversal of input tax credit is required to be made by the manufacturer.**
 - Clarify the **taxability and requirement of availment/ reversal of ITC** in situations where **distributor provides replacement of parts and/or repair services** to the customer, as part of warranty on behalf of the manufacturer.
- **This would clarify the issue of GST liability as well as liability to reverse ITC in respect of warranty replacement of parts and repair services during warranty period and will help in reducing litigation on this account.**

Agenda 3(xvi) : Clarification on taxability of shares held in a subsidiary company by the holding company

[Vol III- Pg. 26-31]

Issue:

- ❖ Representations have been received seeking clarification as to whether the holding of shares in a subsidiary company by the parent company is to be treated as 'supply of service' under GST and is to be taxed accordingly or not.
- ❖ Some of the field formations 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".
- ❖ Securities under GST Law are considered neither goods nor services in terms of definition of goods under section 2(52) of CGST Act and in terms of definitions of services under section 2(102) of the said Act.
- ❖ Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.

Proposal:

- ❖ Law Committee has 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.
- The proposal will help in bringing clarity on the issue and in preventing unnecessary litigation.

Agenda 3(xviii): Special procedure for filing 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.

[Vol III- Pg. 45-49]

Issue:

- ❖ There is no facility available on the portal, at present, to enable filing of appeals by the taxpayers and tax authorities against the orders issued by the proper officers in respect of TRAN-1/ TRAN-2 claims 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.
- ❖ Further, time period for filing appeals in some of such cases may already have expired.

Proposal:

- ❖ Law Committee has recommended for issuance of a notification to provide for a special procedure under section 148 of CGST Act for filing of manual appeals by the taxpayers and tax authorities against such orders, along with extension of time limit to file such appeals.
- This will facilitate taxpayers and the tax officers to file appeal against orders issued by the proper officers in respect of TRAN-1/ TRAN-2 claims.

Agenda 3(vi): : Clarification on refund related issues (1/5)

[Vol 1- Pg. 147-162]

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

- ❖ References received on 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 consequent to change in provisions regarding ITC availment being restricted to that available as per **FORM GSTR 2B**.

Proposal:

- ❖ LC has recommended to clarify through a circular that:
 - w.e.f. 01.01.2022, availment of refund of the accumulated ITC under section 54(3) for a tax period may be restricted to the ITC on inward supplies as reflected in **FORM GSTR-2B of the said tax period or of any previous tax period**.
 - refund claims, which have already been disposed off by the proper officer before issuance of this circular, may not be reopened.

Agenda 3(vi): : Clarification on refund related issues (2/5)

[Vol 1- Pg. 147-162]

Issue 2: Requirement of the undertaking in FORM RFD-01 inserted vide para 7 of Circular No. 125/44/2019-GST dated 18.11.2019

- ❖ **Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 and the undertaking in FORM RFD-01** requires amendment due to omission of Section 42, FORM GSTR-2 & GSTR-3 and amendment in Section 41.

Proposal:

- ❖ LC has recommended to clarify through a circular that:
 - **Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 & undertaking in FORM GST RFD-01 may be amended** to delete the references to the omitted provisions;
 - **Consequently, Annexure-A to Circular No. 125/44/2019-GST dated 18.11.2019 may be amended** to the effect that:
 - “Undertaking in relation to sections 16(2)(c) and section 42(2)” wherever mentioned in Declaration/Statement/Undertaking/ Certificates to be filled online needs to be replaced by “Undertaking in relation to sections 16(2)(c)”.
 - “Copy of GSTR-2A of the relevant period” & “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 needs to be removed/ deleted.

Agenda 3(vi): : Clarification on refund related issues (3/5)

[Vol 1- Pg. 147-162]

Issue 3: Determination of value of adjusted total turnover in the formula under Rule 89(4)

- ❖ Clarification has been sought as to whether in view of insertion of **Explanation in rule 89(4) of CGST Rules**, for the purpose of **calculation of “adjusted total turnover”** in the formula under rule 89(4), the value of goods exported out of India has to be considered as per Explanation under rule 89(4).

Proposal:

- ❖ LC has recommended to **clarify through a circular** that:
 - Consequent to Explanation having been inserted in rule 89(4) of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, **the value of export goods to be included while calculating “adjusted total turnover” in the formula under rule 89(4) will be determined as per the said explanation.**

Agenda 3(vi): : Clarification on refund related issues (4/5)

[Vol 1- Pg. 147-162]

Issue 4: 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

- ❖ Divergent views are taken in field formations regarding treatment of **refund of accumulated ITC on account of inverted rated supply of goods** in cases where **subsidy is given by the Central Government or the State Governments**, resulting in lower taxable value of the outward supply of such goods.

Proposal:

- ❖ LC has recommended to **clarify through a circular** that:
 - the term “Net ITC” 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;
 - 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;
 - **ITC attributable to the subsidy cannot be removed** from the calculation of ‘Net ITC’, or a **notional amount cannot be added** while calculating the ‘tax payable on inverted rated supply’ in the said formula under rule 89(5).

Agenda 3(vi) : Clarification on refund related issues (5/5)

[Vol I- Pg. 147-162]

Issue 5: admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A

- ❖ There are instances where **exporters voluntarily make 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 rule 96A of CGST Rules.
- ❖ 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 refund of unutilized input tax credit on account of export and also refund of the integrated tax and interest so paid.

Proposal:

- ❖ LC has recommended to **clarify through a circular that:**
 - substantive benefits of refund accruing on account of zero-rated supply cannot be denied due to delayed export or delayed receipt of payment for export, as the case may be;
 - **refund of IGST paid in compliance of the provisions of sub-rule (1) of rule 96A of CGST Rules may also be given, but no refund of interest paid can be given in such cases.**
- The proposal will help in bringing clarity on these refund related issues and in preventing unnecessary litigation.

Agenda 3(xvii): Amendment in CGST Rules (1/8)

[Vol III- Pg. 32-44]

I. Omission of clause (c) of Explanation (1) to Rule 43

Issue:

- ❖ 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, which was not further extended after 30.09.2022. As a result, **the said service has become taxable after 30.09.2022.**
- ❖ **Clause (c) of Explanation (1) to Rule 43** of CGST Rules provides that aggregate value of exempt supplies for the purpose of reversal of common input tax credit under rule 42 or rule 43 shall exclude value of supply of services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.
- ❖ 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. Therefore, clause (c) of Explanation (1) to Rule 43 of CGST Rules becomes **redundant** and may be omitted.

Proposal

- ❖ Law Committee has recommended that **clause (c) of Explanation (1) at the end of Rule 43 of CGST Rules may be omitted.**
- The proposal will omit a redundant clause from Explanation (1) of Rule 43 of CGST Rules.

Agenda 3(xvii): Amendment in CGST Rules (2/8)

[Vol III- Pg. 32-44]

II. Amendment in proviso to rule 46(f) of CGST Rules 2017

Issue:

- ❖ Rule 46 of CGST Rules 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 ECO or by a supplier of OIDAR services to an unregistered recipient, irrespective of the value of such supply, a tax invoice issued by the registered person shall **contain the name, address, PIN code and the name of the State of the recipient** and the said address shall be deemed to be the address on record of the recipient for purpose of place of supply.
- ❖ This has led to concern by some tax administrations that where full address of the recipient is not available, the supplier may declare the place of supply as his own location leading to loss of revenue for the consumption states.
- ❖ Concerns have also been raised by some taxpayers in difficulty in providing full address of the recipients on the tax invoices.
- ❖ Accordingly, request has been made to **not insist for 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.

Proposal

- ❖ Law Committee has recommended that **proviso to rule 46(f) of CGST Rules may be amended** to provide that **only name of the State of the recipient may be sufficient** to be provided on the tax invoice for deeming as address on record, and that name, address and PIN code of the recipient may not be required to be declared on the tax invoice.
- The proposal will remove the concerns of the consumption states regarding their loss of revenue and will also ease compliance burden of the taxpayers.

Agenda 3(xvii): Amendment in CGST Rules (3/8)

[Vol III- Pg. 32-44]

III. Amendment in rule 64 and FORM GSTR-5A of CGST Rules 2017

Issue:

- ❖ Rule 64 of CGST Rules provides for filing of a monthly return in **FORM GSTR-5A** by a registered person providing OIDAR services from a place outside India to a person in India other than a registered person.
- ❖ Currently, **FORM GSTR-5A does not capture** details of supplies made by the OIDAR service provider to **registered persons** in India.
- ❖ There may be cases where such person **registered persons in India may not be paying applicable tax on RCM basis** on such supplies received from OIDAR service provider.
- ❖ Accordingly, there may be a need to include details of supplies made by the OIDAR service provider located outside India to **registered persons in India** in **FORM GSTR-5A** to keep track of such supplies.

Proposal

- ❖ Law Committee has recommended for 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 in India.**
- The proposal will help in improving compliance by registered persons in India paying tax on reverse charge basis on supplies received from OIDAR service providers.

Agenda 3(xvii): Amendment in CGST Rules (4/8)

[Vol III- Pg. 32-44]

IV. Amendment in Rule 89(1):

Issue:

- ❖ 3rd proviso to sub-rule (1) of rule 89 of CGST Rules provides that refund of any amount by casual taxable person or by a non-resident taxable person shall be claimed in the **last return** required to be furnished by him.
- ❖ However, **Form GSTR- 3B** does not provide any option of claiming such refund, thus creating an anomaly regarding manner of claiming refund by casual taxable person or a non-resident taxable person.

Proposal

- ❖ Law Committee has recommended that **3rd proviso to sub-rule (1) of rule 89 of CGST Rules may be amended** so that casual taxable person or a non-resident taxable person can claim refund of advance tax amount in the nature of excess balance in electronic cash ledger, **after the last return required to be furnished by him has been so furnished.**
- The proposal will facilitate the casual taxable persons and non-resident taxable persons in claiming refund of advance tax amount deposited by them.

Agenda 3(xvii): Amendment in CGST Rules (5/8)

[Vol III- Pg. 32-44]

V. Amendment in Rule 89(2)(k):

Issue:

- ❖ 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**'.
- ❖ **Statement-7** is designed for excess payment of tax made in a **particular return**.
- ❖ This restricts a taxpayer in filing a claim of refund 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**, etc. under the category 'Excess Payment of Tax'.

Proposal

- ❖ Law Committee has recommended that:
 - **clause (k) of sub-rule (2) of Rule 89 may be amended;**
 - **Statement 7 in FORM GST RFD 01 may be amended** to incorporate the said rule change.
- The proposal will allow the taxpayer to file a claim of refund 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 under the category 'Excess Payment of Tax'.

Agenda 3(xvii): Amendment in CGST Rules (6/8)

[Vol III- Pg. 32-44]

VI. Amendment in Rule 96(2):

Issue:

- ❖ The option to furnish the export details specified in **Table 6A** of **FORM GSTR 1** after filing return in **FORM GSTR-3B** was made available initially vide 1st& 2nd Proviso to Rule 96(2) of CGST Rules, when date of filing of **FORM GSTR-1** were extended.
- ❖ However, now concept of sequential filing of Return has been introduced and Section 37 & Section 39 of CGST Act, 2017 have been amended with effect from 01.10.2022 to provide for mandatory filing of **FORM GSTR-1** before filing of **FORM GSTR-3B** for a tax period.
- ❖ Therefore, 1st& 2nd Proviso to Rule 96(2) of CGST Rules have become redundant.

Proposal

- ❖ Law Committee has recommended **omission of first and second proviso to Rule 96(2) of CGST Rules** as they serve no purpose in light of the amendments in section 37 and 39 of CGST Act.
- The proposal will remove the redundancy in the legal provisions.

Agenda 3(xvii): Amendment in CGST Rules (7/8)

[Vol III- Pg. 32-44]

VII. Amendment in rule 108 and rule 109

Issue:

- ❖ In terms of sub-rule (1) of rule 108 and sub-rule (1) of rule 109 of CGST Rules, doubts are being raised as to **whether an appeal under section 107 can be filed either electronically or manually at the liberty of the Appellant**, or the appeal needs to be filed electronically only, if not otherwise notified by the Commissioner.
- ❖ There is a need to provide a clarity in the matter and also to provide for manual filing of appeal in some specific circumstances.

Proposal

- ❖ Law Committee has recommended **amendment in rule 108(1) and rule 109(1) of CGST Rules by inserting a proviso** in both of the said rules providing for **filing of appeal manually under certain specified circumstances**.
- The proposal will facilitate taxpayers in filing of appeal manually under specified circumstances and will reduce ambiguity on the issue.

Agenda 3(xvii): Amendment in CGST Rules (8/8)

[Vol III- Pg. 32-44]

VIII. Notice in FORM GSTR-3A for non-filing of Annual Return in FORM GSTR-9 or FORM GSTR-9A:

Issue:

- ❖ Section 46 of the CGST Act, read with Rule 68 of CGST Rules, 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 of CGST Act requiring him to furnish such return within fifteen days.
- ❖ While **FORM GSTR-3A** has provision to issue notice to return defaulters as well as defaulters of final return, there is no provision in it to issue notice to defaulters of Annual returns.

Proposal

- ❖ Law Committee has recommended suitable amendment in **FORM GSTR-3A** for issuance of notice to the registered taxpayers for their failure to furnish Annual Return in **FORM GSTR-9** or **FORM GSTR-9A**.
- [The proposal will help in improving discipline in filing of annual returns.](#)

Agenda 3(xix): Issues pertaining to ISD mechanism and taxability of services provided by one distinct person to another distinct person (1/2)

[Vol III- Pg. 50-58]

Issue:

- ❖ Doubts are being raised as to whether it is mandatory for the headquarter office (HO) of an entity to follow the **Input Service Distributor (ISD) mechanism** for distribution of ITC in respect of **common input services, procured from a third party** which are also attributable to one or more branch offices (BOs), or can the HO also follow the **mechanism of raising invoice under section 31** to the BO without registering as ISD and the said BO thereafter claiming ITC in respect of such input services.
- ❖ Disputes are also being raised 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 and also 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 in the taxable value.

Proposal:

- ❖ **LC has recommended the following:**
 - (i) **For common input services procured from third party:**
 - ❑ To clarify through a circular that:
 - ISD mechanism is **not mandatory** as per the present provision of GST law for passing ITC in respect of common input services procured by HO from a third party which are attributable to both HO and BO or exclusively to one or more BOs;
 - **Registration as ISD** mandatory if ITC is to be distributed through ISD mechanism;
 - Distribution of ITC to a BO through ISD mechanism or through issuance of invoice under section 31 **only if the said services are actually being supplied to the concerned BO.**

Agenda 3(xix): Issues pertaining to ISD mechanism and taxability of services provided by one distinct person to another distinct person (2/2)

[Vol III- Pg. 50-58]

Proposal:

- ❑ **For future**, ISD mechanism may be made **mandatory prospectively by amendment in the law** for distribution of ITC in respect of input services procured by HO from a third party but attributable to both HO and BOs or exclusively to one or more Bos, **including in cases, where such input services are liable to tax on reverse charge basis.**
 - **Amendment in GST law** for the same to be formulated by the Law Committee.

(ii) For internally generated services:

- ❑ To clarify through a circular that in cases where full input tax credit is available to the recipient:
 - in view of second proviso to rule 28 of CGST Rules, 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.
 - 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 the said proviso.
- ❑ Law Committee to further deliberate the issue of taxability and valuation of such internally generated services in cases, where full input tax credit is not available to the recipient.

- **The proposal will help in bringing clarity on the issue and will help in reducing litigation on this issue.**

Law Committee Recommendations relating to Compliance and Administrative measures under GST

Agenda 3(ix): Procedure for Recovery of Tax and Interest in terms of Rule 88C(3)

[Vol I- Pg. 175-177]

Issue:

- ❖ As per recommendations of the GST Council in its 48th meeting, **rule 88C** was inserted in the CGST Rules **with effect from 26.12.2022** for **system based intimation** to the registered person in cases of **difference in output tax liability in terms of FORM GSTR-1 and GORM GSTR-3B** of a registered person for any particular month above a specified threshold.
- ❖ The Council had also directed Law Committee to **formulate a procedure** in cases 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 section 79**, for which no satisfactory explanation has been furnished.

Proposal:

- ❖ **LC recommended the following:**
 - insertion of a new **Rule 142B** in the CGST Rules and insertion of a new **FORM GST DRC-01D** to provide for **creation of liability in Electronic Liability Register** by the proper officer in respect of -
 - the amount intimated under rule 88C which is not paid by the registered person and for which no explanation has been furnished or the explanation furnished is not satisfactory; and
 - the amount of interest
- This would help in expeditious recovery of due tax liability and interest amount.

Agenda 3(viii): Mechanism of dealing with differences in ITC between GSTR-3B and GSTR-2B (1/2)

[Vol I- Pg. 170-174]

Issue:

- ❖ **GSTR-3B return** of a registered person for a tax period is being **auto-populated** on the portal from the details in his FORM GSTR-1 and FORM GSTR-2B for the said tax period. However, the registered person is allowed presently to **freely edit the same**.
- ❖ This may lead to **availment of input tax credit by the registered person in GSTR-3B return in excess of that made available in his FORM GSTR-2B**.
- ❖ There is a need to safeguard revenue by finding suitable manner of handling and controlling the difference in ITC availed in FORM GSTR-3B by the registered person and that available as per his FORM GSTR-2B.
- ❖ 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, along with system-based intimation, and a procedure of auto-compliance on the part of the taxpayers to explain/ take remedial action in respect of such differences, **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.

Agenda 3(viii) : Mechanism of dealing with differences in ITC between GSTR-3B and GSTR-2B (2/2)

[Vol 1- Pg. 170-174]

Proposal:

❖ **LC recommended the following:**

- Insertion of new **rule 88D** in CGST Rules for **system based intimation** to the registered person about 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.
- 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.
- Insertion of **FORM GST DRC-01C** in CGST Rules as required under sub-rule (1) of the proposed rule 88D.
- To begin with, system based intimation under proposed rule 88D to the concerned registered person may be given in those cases where difference between the input tax credit availed in FORM GSTR-3B & that available as per FORM GSTR-2B is **more than 20% as well as more than Rs. 25 lakhs.**

➤ This would help in safeguarding the revenue by controlling the difference in ITC availed in FORM GSTR-3B and that available as per FORM GSTR-2B of the taxpayers, and will reduce ITC mismatches.

Agenda 3(xi) : Amendment in CGST Rules, 2017 regarding registration (1/2)

[Vol 1- Pg. 190-194]

Issue:

- ❖ Some 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.
- ❖ There is, therefore, a need for further strengthening and streamlining the registration process in GST to tackle the menace of fake registrations.

Agenda 3(xi): Amendment in CGST Rules, 2017 regarding registration (2/2)

[Vol I- Pg. 190-194]

Proposal

❖ LC recommended the following:

- Amendment in **rule 10A** to provide that the details of bank account may be required to be furnished within **30 days** of grant of registration, or **before filing of statement of outwards supply under section 37 of CGST Act in FORM GSTR-1/ IFF, whichever is earlier.**
- Amendment to **sub-rule (2A) of rule 21A** to provide for **system based suspension** of the registration 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.
 - ✓ Insertion of **3rd proviso in sub-rule (4) of rule 21A** to provide for **automatic revocation of suspension** upon compliance with provisions of rule 10A.
- Amendment to **sub-rule (6) of rule 59** to provide 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.
- Amendment in **rule 9(1) and rule 25 to do away with the requirement of presence of the applicant** for physical verification of business premises and to provide for physical verification in rule 25 in high risk cases even where Aadhaar has been authenticated.

- This would streamline and strengthen the procedure for registration and help in weeding out fake registrations.

Agenda 3(xi(a)): Pilot Project for biometric-based Aadhaar authentication of registration applicants in Puducherry

[Vol III- Pg. 7-9]

Issue:

- ❖ On the recommendations of the GST Council in its 48th meeting, it was decided to conduct a **pilot in the State of Gujarat for biometric-based Aadhaar authentication** of high-risk registration applicants.
- ❖ **Puducherry** has also communicated its **willingness to conduct pilot for biometric authentication** of Aadhaar for high-risk registration applicants in their State.

Proposal:

- ❖ In order to implement the said biometric-based Aadhaar authentication for registration applicants in Puducherry, **the following notifications may be required to be issued:**
 - The State of Puducherry to substitute rule 8(4A) and amendment of rule 8(5) & rule 9 of Puducherry SGST Rules on the lines of corresponding amendments in CGST Rules vide notification no. 26/2022-CT dated 26.12.2022 and notification no. 04/2023-Central Tax dated 31.03.2023;
 - The Central Government 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.
- ❖ **Council may authorize the Chairperson to extend the said pilot project, if required, in other States and/ or Union territories, who may be willing to conduct pilot for such biometric authentication of Aadhaar.**
- ❖ **Amendments made in rule 8(5), rule 9(1) and 9(2) of CGST Rules vide Notification No. 26/2022-CT dated 26.12.2022, may be notified by all States in their SGST Rules to provide for mandatory physical verification of registration applicants in high risk Aadhaar authenticated cases.**

- This would help in strengthening the registration process and will help in weeding out fake registrations.

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

[Vol 1- Pg. 143-146]

Issue:

- ❖ Representations received seeking clarification with respect to **applicability of e-invoicing** under rule 48(4) of 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**, which are registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act.

Proposal:

- ❖ LC has recommended **to clarify 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.
- This will help in bringing clarity on the issue and improve e-invoicing compliance.

Agenda 3(i) : Rules amendment consequent to submission of report of Group of Ministers (GoM) on implementation of E-way bill requirement for movement of Gold/ Precious stones under chapter 71

[Vol 1- Pg. 105-108]

Issue:

- ❖ The **Group of Ministers (GoM) on e-way bill for gold and precious stones** had submitted its report containing various recommendations in respect of e-way bill requirement for intra-state movement of gold and precious stones, which were accepted by the GST Council in its **47th meeting**.
- ❖ These recommendations inter alia include option to the States to require generation of e-way bill for intra-State movement of gold and precious stones, above a threshold of minimum 2 lakhs rupees, to be decided mutually by the Commissioner of State tax and Chief Commissioner of Central tax.
- ❖ LC was mandated to formulate requisite amendments in rules for this purpose.

Proposal:

- ❖ LC has recommended 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 generation of e-way bills for intra-State movement of gold and precious stones under Chapter 71, for implementing the said recommendations of GoM.
- The proposal will enable the States to implement the requirement of e-way bill for intra-State movement of gold and precious stones, thus reducing evasion in respect of the said commodities.

Agenda 3(ii): Agenda Note for Capacity based taxation and Special Composition Scheme in certain Sectors in GST (1/2)

[Vol 1- Pg. 109-129]

Issue:

- ❖ GST Council in its 42nd meeting 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.
- ❖ The GoM submitted its report with various recommendations which inter-alia included special registration mechanism for machines used in production of tobacco, pan masala and other similar items, special monthly returns to be filed by manufacturers of these items and prescribing heavy penalty for any unregistered machines found operating.
- ❖ These recommendations were accepted by GST Council in its 49th meeting and accordingly, procedure for implementation of said recommendation needs to be devised.

Proposal:

- ❖ Law Committee recommended for:
 - issuance of a **notification under section 148** of CGST Act prescribing the **special procedure** in respect of **registration of machines** used in manufacturing of tobacco, pan masala and similar items and **special monthly returns** to be filed by manufacturers of these items.
 - Insertion of a **new section 122A** in CGST Act to provide for **penalty for non-declaration of machines** by such manufacturers, in addition to the penalty provisions specified in Section 122 of CGST Act.

Agenda 3(ii) : Agenda Note for Capacity based taxation and Special Composition Scheme in certain Sectors in GST (2/2)

[Vol 1- Pg. 109-129]

- Special registration of machines and filing of special monthly returns **to be done on the common portal** without any manual interface to prevent any undue harassment of the taxpayers.
 - 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** with effect from **01.10.2023**.
 - **Tobacco, pan masala & similar items as well as mentha oil** may be notified under the proposed section 16(4) of IGST Act as goods on **whose supply IGST refund route shall not be available**.
 - Recommendations of GoM pertaining to implementation of QR code on pouches and track and trace mechanism, etc. may be taken at a later stage after the implementation of the special procedure recommended, as they involve detailed examination of their technical feasibility on the system.
- The implementation of special procedure for manufacturers of evasion prone commodities will help in curbing tax evasion from these commodities.

Agenda 3(xiv): Agenda Note for Rules Amendment consequent to amendments carried out by Finance Act, 2023 (1/3)

[Vol 1- Pg. 209-214]

Issue 1: Insertion of Explanation 3 to rule 43

- ❖ **Explanation to sub-section (3) of section 17 of CGST Act** was amended to provide that the value of such activities or transactions in respect of **clause (a) of paragraph 8 of Schedule III** of CGST Act, as may be prescribed, shall not be excluded from the value of exempt supply for the purpose of reversal of input tax credit under sub-section (2) of section 17.
- ❖ This was done as per the recommendation made by GST Council in its 47th meeting **to deny refund of input tax credit in respect of duty free shops (DFS) at arrival terminal of international airports.**

Proposal :

- ❖ Law Committee has recommended for **insertion of Explanation 3 after rule 43 of CGST Rules** to prescribe that:
 - **the value of activities or transactions in respect of paragraph 8(a) of Schedule III** of the CGST 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.**

Agenda 3(xiv): Agenda Note for Rules Amendment consequent to amendments carried out by Finance Act, 2023 (2/3)

[Vol 1- Pg. 209-214]

Issue 2: Amendment of rule 162

- ❖ Vide Finance Act 2023, **section 138 of the CGST Act has been amended** to provide for an amount ranging from **twenty-five percent to hundred percent** of the tax involved for **compounding of offences.**
- ❖ Further, sub-section (2) of section 138 of CGST Act provides for **prescribing such compounding amount with respect to various offences** through CGST Rules.

Proposal :

- ❖ Law Committee has recommended for:
 - **insertion of a sub-rule (3A) in rule 162** of CGST Rules to prescribe the compounding amount for various offences under section 132 of CGST Act.
 - **amendment of sub-rule (3) of rule 162** to omit the condition that the applicant has cooperated in the proceedings.

Agenda 3(xiv): Agenda Note for Rules Amendment consequent to amendments carried out by Finance Act 2023 (3/3)

Issue 3: Insertion of rule 163

[Vol 1- Pg. 209-214]

- ❖ GST Council in its 47th meeting recommended to allow **sharing of data** available on the portal **with the consent** of the supplier and also of the recipient in certain cases.
- ❖ Accordingly, a new **section 158A** has been inserted in the CGST Act through Finance Act, 2023 to provide for prescribing manner and conditions for sharing of information furnished by registered person on the common portal with such other systems, as may be notified.

Proposal :

- ❖ Law Committee has recommended for:
 - **insertion of rule 163** in CGST Rules to implement the provisions of the newly inserted section 158A in CGST Act regarding consent based sharing of information of registered persons under GST.
 - **issuance of a notification under section 158A** of CGST Act for notifying “**Account Aggregators**” as the systems with which information is to be shared by the common portal.
- **The above amendments in CGST Rules and issuance of notifications to be done once the provisions of Finance Act 2023 come into effect.**
- Council may also like to fix **01.10.2023** as the date on which the provisions in Finance Act, 2023 pertaining to GST may come into effect.
- **The proposal will help in bringing effect to amendments carried out in CGST Act through Finance Act 2023.**

Agenda 3(xv): Agenda Note for prescribing Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023

[Vol III- Pg. 10-25]

Issue:

- ❖ In 49th GST Council meeting, 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 to 154 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.
- ❖ Therefore, it is required that Rules governing appointment and conditions of President and Members of the proposed GST Appellate Tribunal may be formulated for enabling smooth constitution and functioning of GST Appellate Tribunal.

Proposal

- ❖ Law Committee has recommended the **rules for governing appointment and conditions of President and Members** of the proposed GST Appellate Tribunal in form of **GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2023**.
- ✓ The said Rules may be notified after notification of the above mentioned provisions of the Finance Act, 2023.
- **The proposal will help in smooth implementation and effective operation of GST Appellate Tribunal.**

Agenda 3(iv): Issues pertaining to interpretation of Section 10 of IGST Act, 2017

[Vol 1- Pg. 139-142]

Issue:

- ❖ In 37th GST Council Meeting, 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 (PoS) in cases where the goods are purchased over the counter (OTC) basis in one state and thereafter transported to another state by the recipient.
- ❖ The Council recommended to refer the agenda back to the Law Committee for considering the issue afresh after obtaining opinion of the States.

Proposal:

- ❖ Law Committee considered the issue afresh after obtaining the opinion of the States and recommended the following –
 - No need for amendment in section 10 of IGST Act for the supplies made to **registered persons**.
 - For the supplies made to **unregistered persons**, insertion of a new clause (ca) after clause (c) of sub-section (1) of section 10 of the IGST Act providing that PoS be:
 - ✓ the location as per the address of the said person recorded in the invoice issued in respect of the said supply; and
 - ✓ the location of the supplier, where the address of the said person is **not recorded** in the invoice.
- This will bring clarity for determination of the place of supply in case of OTC sale and will help in reducing disputes on the issue.

Other Proposals pertaining to Law and Procedures

Agenda 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

Issue:

[Vol III- Pg. 60-61]

- ❖ Request has been received from the CCT Manipur vide letter dated 03.07.2023 for **extension of due dates for filing GSTR-7, GSTR-1 & GSTR-3B for the months of April, May and June 2023 in the State of Manipur till 31.07.2023**. 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.
- ❖ CCT, Manipur has also requested to **extend the Amnesty Schemes notified vide notifications dated 31.03.2023** regarding non-filers of GSTR-4, GSTR-9 and GSTR-10 returns, revocation of cancellation of registration and deemed withdrawal of assessment orders issued under Section 62 **till 31.07.2023**, as these amnesty schemes have come to an end on 30.06.2023.
- ❖ Similar request for extension of amnesty schemes have also been received from some trade association.
- ❖ **GSTN has informed that:**
 - due date of filing of GSTR-7, GSTR-1 & GSTR-3B can be extended on the portal for taxpayers of Manipur;
 - it may not be possible for immediate extension of dates of amnesty scheme on the portal only for taxpayers of one State, as it will require coding in each of the functionalities for amnesty scheme;
 - such extension of dates for amnesty schemes can, however, be done easily on the portal on All India Basis.

Proposal:

- ❖ Council may deliberate on the matter regarding the request of CCT Manipur.

THANK YOU

GST-R1 and GST-R3B filing Trend by Manipur Tax Payers

GST-R1

Return Period	Eligible to File	Filed till end of next month		Filled till 06th July 2023	%age filing till date
Jan-23	9,805	6,921	70.59%	7,977	81.36%
Feb-23	8,694	7,145	82.18%	7,872	90.55%
Mar-23	11,229	8,222	73.22%	9,112	81.15%
Apr-23	8,800	3,606	40.98%	5,756	65.41%
May-23	8,763	4,944	56.42%	5,288	60.34%

GST-R3B

Return Period	Eligible to File	Filed till end of next month	%age filing till end of next Month	Filled till 06th July 2023	%age filing till date
Jan-23	9,805	6,735	68.69%	7,941	80.99%
Feb-23	8,694	7,009	80.62%	7,827	90.03%
Mar-23	11,229	7,895	70.31%	8,948	79.69%
Apr-23	8,800	3,480	39.55%	5,644	64.14%
May-23	8,763	4,798	54.75%	5,159	58.87%

No. of Tax Payers who have NOT Provided Bank Account till date				
Date Slab based on Registration Grant Date (Current Date - GST Approval Date)	No. of Tax Payers	%age of Total	No. of Tax Payes who got Registered on or after 01st Jan 2023	%age of Total
Within 10 days	37,366	4.14%	37,366	9.30%
11 to 20 days	32,730	3.63%	32,730	8.15%
21 to 30 days	41,972	4.65%	41,972	10.45%
31 to 45 days	50,767	5.62%	50,767	12.63%
More than 45 days	7,40,021	81.96%	2,38,971	59.47%
Grand Total	9,02,856	100.00%	4,01,806	100.00%
Total Number of Active Tax Payers as on date		1,37,82,851		
%age of Defaulters		6.55%		
Total Number New Registration Jan-23 to June-23		10,46,211		
%age of Defaulters		38.41%		
Note :				
1. Only Active Tax Payers are considered				
2. Only Normal and Composition Tax Payers are considered				

Return Risk Engine (ITC Spike Rule: R3B-R2B)								
Domestic ITC availed in GST-R3B compared with Domestic ITC accrued in GST-R2B					Only Monthly Tax Payers are considered			
Return Period	Above 10 lakhs & 10%		Above 10 lakhs & 15%		Above 10 lakhs & 20%		Above 25 lakhs & 20%	
	No. of GSTINs	Mismatch (in Cr.)	No. of GSTINs	Mismatch (in Cr.)	No. of GSTINs	Mismatch (in Cr.)	No. of GSTINs	Mismatch (in Cr.)
Oct-22	14,180	10,821.65	12,960	10,129.72	11,944	9,462.85	5,331	8,438.45
Nov-22	11,332	7,897.89	10,319	7,363.39	9,463	6,910.19	4,081	6,080.95
Dec-22	11,471	8,627.92	10,426	8,050.12	9,580	7,458.74	4,272	6,638.28
Jan-23	11,340	11,571.09	10,438	11,135.53	9,684	10,770.51	4,248	9,931.70
Feb-23	13,862	8,295.65	12,933	7,814.01	12,185	7,418.58	5,266	6,349.95
Mar-23	33,239	22,610.51	31,335	21,526.62	29,700	20,313.74	13,361	17,787.58
Apr-23	9,292	25,634.28	8,735	25,333.14	8,205	24,922.90	3,974	24,267.94
May-23	12,084	9,287.71	11,193	8,709.57	10,467	8,241.32	4,922	7,378.13
Grand Total	1,16,800	1,04,746.71	1,08,339	1,00,062.10	1,01,228	95,498.82	45,455	98,845.75
Average Per Return Period	14,600	13,093	13,542	12,508	12,654	11,937	5,682	10,856

Return Risk Engine (R1 and R3B Spike Rule: R1-R3B)								
Liability Declared in GST-R1 compared with GST-R3B					Only Monthly Tax Payers are considered			
Return Period	Above 10 lakhs & 10%		Above 10 lakhs & 15%		Above 10 lakhs & 20%		Above 25 lakhs & 20%	
	No. of GSTINs	Mismatch (in Cr.)	No. of GSTINs	Mismatch (in Cr.)	No. of GSTINs	Mismatch (in Cr.)	No. of GSTINs	Mismatch (in Cr.)
Oct-22	2,628	1,528.13	2,558	1,496.96	2,495	1,463.63	1,094	1,250.55
Nov-22	2,289	1,637.04	2,235	1,610.93	2,177	1,582.89	962	1,395.78
Dec-22	2,526	7,386.32	2,454	7,348.90	2,384	7,311.99	1,105	7,114.11
Jan-23	2,655	1,959.29	2,606	1,935.02	2,528	1,901.52	1,085	1,680.25
Feb-23	3,654	3,752.66	3,601	3,725.07	3,540	3,678.70	1,327	3,340.77
Mar-23	7,640	4,963.51	7,506	4,897.14	7,378	4,825.73	3,410	4,209.11
Apr-23	5,238	6,295.29	5,158	6,237.72	5,096	6,212.98	2,117	5,751.39
May-23	13,404	8,900.78	13,353	8,877.08	13,297	8,843.16	5,414	7,626.41
Grand Total	40,034	36,423.03	39,471	36,128.82	38,895	35,820.59	16,514	32,368.37
Average Per Return Period	5,004	4,552.88	4,934	4,516.10	4,862	4,477.57	2,064	4,046.05

50th GST Council Meeting

Agenda item 4

Recommendations of Fitment Committee
on
Goods and Services

11th July, 2023

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

Goods

- **Total 35 issues examined**

- Recommendations for making **changes** in GST rates/ issuing clarifications- **14**
[Agenda 4 (a): Vol-I: Annexure-I :pages 216 to 225]
- Recommendations for making **no change** - **17**
[Agenda 4 (b):Vol-I: Annexure-II: pages 226-237]
- Issues **deferred** for further examination – **4**
[Agenda 4 (c): Vol-I: Annexure-III :pages 238 to 246]

Services

- **Total 16 issues examined**

- Recommendations for making **changes** in GST rates/ issuing clarifications- **7**
-[Agenda 4 (d): Vol –I: Annexure-IV :pages 247 to 260]
- Recommendations for making **no change** - **3** - [Agenda 4 (e): Vol –I: Annexure-V: pages 261-264]
- Issues **deferred** for further examination – **6** -[Agenda 4 (f) : Vol –I: Annexure-VI :pages 265 to 274]
- **Standalone agenda -1 (Sl.No. 3/3A)** -[Agenda 4 (Part II) (g) : Vol III (addendum):pages 71 to 74]

Goods-Changes Recommended (14):

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S.No. 1 Vol-I: Page No. 216	<ul style="list-style-type: none"> ➤ GST rate on uncooked/unfried extruded snack pellets, by whatever name called, may be reduced to 5% ➤ The issue for the past periods may be regularized on as is basis. 	No objection
4(a) (Annexure-I) S.No. 2 Vol-I: Page No. 216-217	<ul style="list-style-type: none"> ➤ GST rate on fish soluble paste (CTH 2309) may be reduced from 18 % to 5%. ➤ The issue for the past periods may be regularized on as is basis. 	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S.No. 3 Vol-I: Page No. 217	➤ IGST may be exempted on Dinutuximab (Quarziba) cancer medicine when imported for personal use. MoHFW has confirmed that Dinutuximab (Quarziba) is not approved by the Central Drugs Standard Control Organization (CDSCO) and hence is only imported	No objection
4(a) (Annexure-I) S.No. 4 Vol-I: Page No. 217-218	<ul style="list-style-type: none"> ➤ IGST may be exempted <ol style="list-style-type: none"> on Medicines and Food for Special Medical Purposes (FSMP) used in the treatment of rare diseases enlisted under the National Policy for Rare Diseases, 2021 which are imported for personal use subject to existing conditions and FSMP when imported by Centres of Excellence for Rare Disease or any person or institution on recommendation of any of the listed Centres of Excellence. 	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S.No. 5 Vol-I: Page No. 218-219	<ul style="list-style-type: none"> ➤ On the recommendations of 47th GST Council meeting, GST rate of 5% was fixed on all goods viz. trauma, Spine and Arthroplasty implants falling under heading 9021 w.e.f. 18.07.2022. ➤ Earlier there were two entries @ 5% and @ 12% for similar goods under 9021, which was causing confusion. ➤ To regularize the matter for the period prior to 18.07.2022 on "as is basis" in view of genuine interpretational issues, that is, in case of payments at 5% or 12%. 	No objection
4(a) (Annexure-I) S.No. 6 Vol-I: Page No. 219-220	<ul style="list-style-type: none"> ➤ May be clarified that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply to the cooperatives (being a registered person) attracts 5% GST under reverse charge mechanism. ➤ The issue for the past periods may be regularized on as is basis. 	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S.No. 7 Vol-I: Page No. 220-221	<ul style="list-style-type: none"> ➤ New Foreign Trade Policy came into force w.e.f. 01.04.2023. ➤ Consequential changes may be carried out in the notifications. 	No objection
4(a) (Annexure-I) S.No. 8 Vol-I: Page No. 221-222	<ul style="list-style-type: none"> ➤ GST on imitation zari thread or yarn known by any name in trade parlance may be reduced from 12% to 5%. ➤ The issue for the past periods may be regularized on as is basis. 	No objection
4(a) (Annexure-I) S.No. 9 Vol-I: Page No. 222-223	<ul style="list-style-type: none"> ➤ GST rate may be reduced on LD slag from 18% to 5%. 	<ul style="list-style-type: none"> ➤ Both Odisha & Punjab drew attention to 48th GSTC wherein the same request was not recommended on the ground that it can be used in cement industry and ITC can be taken. It was explained that LD slag is not preferred by cement industry due to excess lime content. <p>.....contd.</p>

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S.No. 9 Vol-I: Page No. 222-223	<ul style="list-style-type: none"> ➤ GST rate may be reduced on LD slag from 18% to 5%. 	<ul style="list-style-type: none"> ➤ Karnataka pointed out that other by-products of steel namely, BF Slag & Fly Ash are already at 5%. ➤ Odisha was asked whether a study has been conducted. ➤ Maharashtra pointed out that if offtake is not there, taxing at 18% has no meaning.
4(a) (Annexure-I) S.No. 10 Vol-I: Page No. 223	<ul style="list-style-type: none"> ➤ 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. ➤ List no. 34 may be updated as per revised Appendix 4B of FTP 2023 subject to confirmation from DGEP and DGFT. 	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S.No. 11 Vol-I: Page No. 223-224	<ul style="list-style-type: none"> ➤ Compensation cess of 22% is applicable on <i>Sports Utility Vehicles (SUVs) (of length more than 4-metre, engine capacity more than 1500cc and ground clearance 170 mm)</i>. ➤ FC recommended to include all <u>utility vehicles</u> 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. ➤ FC 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 unladen condition. 	No Objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S.No. 12 Vol-I: Page No. 224-225	➤ In cases where RSP is not required to be declared by law on pan masala and tobacco products, earlier ad-valorem rate, applicable as on 31st March 2023 for such goods, may be notified by amending the compensation cess notification.	No objection
4(a) (Annexure-I) S.No. 13 Vol-I: Page No. 225	➤ Issues related to dessicated coconuts for the period 1.7.2017 to 27.7.2017 may be regularized on as is basis.	No objection
4(a) (Annexure-I) S.No. 14 Vol-I: Page No. 225	➤ Since areca leaf plates and cups are already exempt, no action is required.	States had no objection but Karnataka suggested to regularise on as is basis for the period before 01.10.2019

Goods-~~No change recommended (17) :~~

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) S.No. 1 Vol-I: Page No. 226	<ul style="list-style-type: none"> ➤ Ministry of Power has requested for reduction of rate of GST on agro based biomass pellets to Nil as they have mandate to use 5% of biomass co-firing in all coal based Thermal Power Plants and to promote its uptake. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	➤ While Gujarat has no objection to the proposal, the state suggested to regularise the issue on biomass briquettes for the period 01.07.2017 to 12.10.2017 and on solid bio fuel pellets from 01.07.2017 to 26.07.2018.
4(b) (Annexure-II) S.No. 2 Vol-I: Page No. 227	<ul style="list-style-type: none"> ➤ Request is for increasing GST rate on de-oiled rice bran on the grounds that rice bran is sold to animal feed producers directly from the un-organized market or billed as de-oiled rice bran 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 <i>status quo</i>. 	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (b) (Annexure-II) S.No. 3 Vol-I: Page No. 227	<ul style="list-style-type: none"> ➤ Request is to exempt products prepared or manufactured by the inmates of Kerala Prison and Correctional Services Department. ➤ End use based exemption is difficult to administer, prone to leakages ➤ Will lead to inverted duty structure on many commodities. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection
4 (b) (Annexure-II) S.No. 4 Vol-I: Page No. 228	<ul style="list-style-type: none"> ➤ Request is for reduction in GST rate on bio-fertilizers and organic inputs from 12% to 5%. ➤ Council did not recommend changes in rates in 31st, 39th, 45th and 47th meetings. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) S.No. 5 Vol-I: Page No. 228-229	<ul style="list-style-type: none"> ➤ Request is to reduce GST on Sungudi sarees from 5% to nil. ➤ Exempting GST will break ITC chain and entail end use-based exemption which are prone to misuse. ➤ Persons under the threshold exemption are exempt from paying GST on their supplies. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection
4(b) (Annexure-II) S.No. 6 Vol-I: Page No. 229-230	<ul style="list-style-type: none"> ➤ Request is from IAEA seeking upfront exemption from IGST on imports of their equipment and doing away with refund mechanism under Section 55 of CGST Act. ➤ Giving such exemption for a particular organization will result in similar requests in future from other organizations, which is not desirable and is prone to misuse. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) S.No. 7 Vol-I: Page No. 230	<ul style="list-style-type: none"> ➤ Request is to reduce GST on Avgas from 18% to nil/1%. ➤ Avgas is not goods for common man purpose. ➤ Reducing GST rate is not likely to significantly reduce training cost. ➤ ITC is available of GST paid on Avgas used for supplying pilot training services ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection
4(b) (Annexure-II) S.No. 8 Vol-I: Page No. 231	<ul style="list-style-type: none"> ➤ Request is to reduce GST on machinery used in sericulture industry and automatic reeling machinery from 18 % to 5%/Nil. ➤ End-use based exemption are prone to misuse ➤ Will deepen duty inversion as raw materials attract 18% GST. ➤ Council in 47th meeting did not recommend change in rate for Silk Reeling machineries. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) S.No. 9 Vol-I: Page No. 231-232	<ul style="list-style-type: none"> ➤ Request is for uniform GST rate of 5% on all sports goods (presently @12 %) and fitness products (@18%). ➤ This will lead to inverted duty structure as most of the inputs (steel, rubber etc) attract GST @ 18%. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection
4(b) (Annexure-II) S.No. 10 Vol-I: Page No. 232	<ul style="list-style-type: none"> ➤ The present request is for introducing concessions under GST based on the lines of those that existed in the Central Excise regime for Mega Power Projects and that existed presently in Customs. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection
4(b) (Annexure-II) S.No. 11 Vol-I: Page No. 233	<ul style="list-style-type: none"> ➤ Request is to reduce GST rate on apple carton boxes from 18 to 5 %. ➤ End-use based exemptions/concessional rates are difficult to administer. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) S.No. 12&14 Vol-I: Page No. 233-234, 235	<ul style="list-style-type: none"> ➤ Present request is to reduce GST and compensation cess on flexi fuel vehicles. ➤ Flexi-fuel vehicles not clearly distinguishable and identifiable unlike EVs. ➤ No clear cut 'definition' of flexi fuel vehicle in the Motor Vehicle Act or any allied Acts. ➤ May lead to mis-classification of vehicles as flexi fuel vehicles for availing benefit of concessional GST rate. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection
4(b) (Annexure-II) S.No. 13 Vol-I: Page No. 234	<ul style="list-style-type: none"> ➤ Request is to exempt GST on agricultural products and on agriculture- based items to protect farmers. ➤ Farmers do not have to pay tax on supply of fresh fruits and vegetables. Request is general in nature. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) S. No. 15 Vol-I: Page No. 235-236	<ul style="list-style-type: none"> ➤ Request is to reduce GST on utensil made up of metals. ➤ Already an inverted duty structure as raw materials attract 18% GST. Cost may increase with ITC accumulation. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection
4(b) (Annexure-II) S.No. 16 Vol-I: Page No. 236	<ul style="list-style-type: none"> ➤ Request is to reduce GST rate on heavy feedstock, Vacuum Gas Oil (VGS)/reformates, etc from 18% to nil. ➤ Lack of clarity on intended use, capacity utilization potential and benefits. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection
4(b) (Annexure-II) S. No. 17 Vol-I: Page No. 236-237	<ul style="list-style-type: none"> ➤ Request is to reduce rate on all bakery products manufactured and sold by MSME to 5%. ➤ Providing source based exemption to MSME sector for specific products will be difficult to monitor and will cause distortion. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection

Goods- **Deferred Issue (4):**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(c) (Annexure-III) S.No. 1 Vol-I: Page No. 238-240	➤ On the issue of prescribing 5% GST rate on 'millet-mix' containing 90% millets, Fitment committee recommended to defer the issue for in-depth study as classification and tax treatment at par with cereal flours is likely to affect a large number of similarly placed products/mixes such as idle mix, dosa mix etc entailing significant revenue implication.	No objection
4(c) (Annexure-III) S. No. 2 Vol-I: Page No. 240	➤ On the issue whether khari and cream roll should get covered under "rusk, toasted bread and similar toasted products", Fitment Committee recommended to defer the issue for in-depth study regarding the nature of product and process of preparation before making any suggestions.	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(c) (Annexure-III) S. No. 3 Vol-I: Page No. 240-241	<p>➤ Request is to clarify regarding the scope of the product 'sugar-boiled confectionary' in view of difficulty in administering the levy on sugar boiled confectionery (at 12%) from sugar confectionary (at 18%).</p> <p>➤ On the issue of prescribing a uniform rate, Fitment Committee recommended to defer the issue for industry consultation.</p>	No objection

Agenda No.	Issue/Proposal	Status after officers' meeting
4(c) (Annexure-III) S. No. 4 Vol-I: Page No. 241-246	<ul style="list-style-type: none"> ➤ GST Council in its 47th meeting referred the issue of levy of GST on steel scrap on RCM basis to Fitment Committee. ➤ <u>State of Karnataka:</u> <ul style="list-style-type: none"> ❖ Such proposal may not be feasible as it breaks the ITC chain, leads to cascading of taxes and breakage of audit trail. ❖ Suggested measures such as introduction of trace and track mechanism, better registration procedures, registration of e-way bills if that commodity is registered to be supplied, ITC only if invoice is registered etc. ➤ <u>State of Punjab:</u> <ul style="list-style-type: none"> ❖ Tax iron and scrap on RCM and exempt supply of scrap in the hands of traders ❖ Make e-way bill mandatory for all transactions in scrap irrespective of value. ➤ Fitment Committee recommended to defer the issue to create a Committee of officers to study the issue holistically and to come up with workable solutions. 	No objection

Services- Change recommended (7) :

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 1 Vol-I: Page No. 247	<ul style="list-style-type: none"> ➤ Satellite launch services supplied by ISRO, Antrix Corporation Ltd (ACL) and New Space India Ltd (NSIL) are already exempt from GST ➤ GST on satellite launch services provided by private organizations may be exempted to promote start ups. 	No objection
4(d) (Annexure-IV) S.No. 2 Vol-I: Page No. 247-248	<ul style="list-style-type: none"> ➤ Anomaly may be rectified by inserting an Explanation that item at sl. No. 3(ie) of the notification No. 11/2017-CTR 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. 	No objection

Services- Change recommended (7) :

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 3 Vol-I: Page No. 248	➤ 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 may be omitted as parallel entry at sl. No. 53A of the notf. No. 12/2017 CTR dated 28.06.2017 has already been omitted.	No objection
4(d) (Annexure-IV) S.No. 4(a) Vol-I: Page No. 248-250	➤ GTAs may not be required to file declaration for paying GST under forward charge every year. If they have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to reverse charge mechanism (RCM).	No objection

Services- Change recommended (7) :

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 4(b) Vol-I: Page No. 250	➤ Last date of exercising the option by GTAs to pay GST under forward charge may be 31st March of preceding Financial Year instead of 15th March. 1st January of preceding Financial Year may be the start date for exercise of option.	No objection
4(d) (Annexure-IV) S.No. 5 Vol-I: Page No. 250-252	<p>➤ The provisions which were introduced in the notification Nos. 8/2017-ITR, 9/2017-ITR and 10/2017-ITR making the importer liable to pay GST on ocean freight paid to foreign shipping lines under RCM have lost relevance and thus may be amended/deleted.</p> <p>➤ The proposed amendments/deletions may be synchronized with date of notification of Section 162 of Finance Act, 2023.</p>	No objection

Services- Change recommended (7) :

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (d) (Annexure-IV) S.No. 6 Vol-I: Page No. 252	<ul style="list-style-type: none"> ➤ It may be clarified that services supplied by a director of a company to the company in his private or personal capacity such as supplying services by way of renting of immovable property to the company or body corporate are not taxable under RCM. ➤ Only those services supplied by a director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017. 	No objection
4(d) (Annexure-IV) S.No. 7 Vol-I: Page No. 252-255	<ul style="list-style-type: none"> ➤ It may be clarified that supply of food in cinema halls is taxable as restaurant service as long as (a) they are supplied by way of or as part of a service and (b) supplied independently of the cinema exhibition service. ➤ Where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply. 	No objection

Services-No change recommended (3) :

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (e) (Annexure-V) S.No. 1 Vol-I: Page No. 261	<ul style="list-style-type: none"> ➤ Exempt IGST on purchase of aircraft and aircraft lease payment ➤ 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. ➤ Fitment Committee recommended to maintain <i>status quo</i> 	No objection
4(e) (Annexure-V) S.No. 2 Vol-I: Page No. 261-263	<ul style="list-style-type: none"> ➤ Exempt GST on the services by the way of granting affiliation to schools by Central Board of Secondary Education (CBSE) for conduct of secondary stage examinations in schools ➤ 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 Council. The Council did not accept the request. ➤ Fitment Committee recommended to maintain <i>status quo</i> 	No objection

Services-**No change recommended (3) :**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(e) (Annexure-V) S.No. 3 Vol-I: Page No. 263-264	<ul style="list-style-type: none"> ➤ Exempt GST on digital news subscription ➤ 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 lower. ➤ Lowering of GST on e-paper will adversely affect the printed newspaper industry. ➤ Exemption would result in blockage of ITC and increase of cost. This will also lead to inverted duty structure. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection

Services- **Deferred Issue (6):**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 1 Vol-I: Page No. 265-267	<ul style="list-style-type: none"> ➤ 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. ➤ Since the matter is sub-judice in the Hon'ble Supreme Court of India, it may be deferred. 	No objection
4 (f)(Annexure-VI) S.No. 2 Vol-I: Page No. 267-268	<ul style="list-style-type: none"> ➤ To exempt services provided by District Mineral Foundations (DMFs). ➤ 45th GST Council deferred the matter stating that the issue was not clear. Further, the council directed to obtain details about the nature of activities undertaken by DMF from Odisha. ➤ However, no reply in the matter has been received so far. ➤ The matter may be deferred till reply is received from State of Odisha. 	No objection

Services- **Deferred Issue (6):**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 3 Vol-I: Page No. 268-269	<ul style="list-style-type: none"> ➤ 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 ➤ Members were requested to share practices being followed in their states with regard to levy of GST on such further supply of electricity along with other details. The reply has not been received so far. ➤ The matter may be deferred till the receipt of information. 	No objection
4(f) (Annexure-VI) S.No. 4 Vol-I: Page No. 279-271	<ul style="list-style-type: none"> ➤ To clarify whether ITC credit 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 ➤ Data from GSTN is required to be obtained regarding how much tax is being paid by suppliers of restaurant service in cash and credit ➤ Pending the information the matter may be deferred. 	No objection

Services- **Deferred Issue (6):**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 5 Vol-I: Page No. 271-272	<ul style="list-style-type: none"> ➤ To clarify that job work activity for processing of "Barley" into malt for alcoholic beverages industry attracts GST @ 5% and in case it is held that GST @18% i.e., leviable, to regularize for past on 'as is basis' ➤ West Bengal raised some concerns in relation to the instant issue and requested for time to present its views after due consultation. ➤ The matter may be deferred. 	No objection
4(f) (Annexure-VI) S.No. 6 Vol-I: Page No. 272-274	<ul style="list-style-type: none"> ➤ To apply uniform 5% GST on Business Correspondent services provided in both rural/urban areas. ➤ Data is required from Department of Financial Services regarding services provided by BC/BF in urban areas. ➤ The matter may be deferred. 	No objection

Services :**Standalone agenda (1)**

Agenda No.	Issue/Proposal	Status after officers' meeting
Agenda 4 (Part II) (g) Vol III (addendum): pages 71 to 74	➤ Standalone agenda deferred from 47th Meeting: positive list of services to be specified in Sl. No. 3/3A	-

Recommendations of the Fitment Committee:

Goods

[Agenda 4\(a\) \(Annexure-I\): Changes in GST rates/ issuing clarification](#) (pages-215-225)

1. Kachri /Kachri Papad/Unfried snack pellets manufactured through extrusion process : (page 216)

- On the recommendations of 48th GST Council, a clarification was issued that extruded products such as “fryums” are classifiable under 19059030 attracting GST rate of 18%.
- Representation received:
 - to reduce the rate of GST or exempt the products, and
 - to regularize the issue for the past periods.
- Fitment Committee recommendations:-
 - GST rate on uncooked/unfried extruded snack pellets, by whatever name called, may be reduced to 5%
 - The issue for the past periods may be regularized on *as is basis*.



Agenda 4(a) (Annexure-I)

2. Fish soluble paste: (pages 216-217)

- 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.
- Fish soluble paste is a by-product produced while producing fish meal and fish oil.
- Fishmeal attracts GST rate of 5% but fish soluble paste, generated as a waste by-product during the process of manufacture of fish meal, attracts 18% GST rate.
- Representation received:
 - to reduce the rate of GST to 5%
 - to regularize the issue for the past periods.
- Fitment Committee recommendations:
 - GST rate on fish soluble paste (CTH 2309) may be reduced from 18 % to 5%.
 - The issue for the past periods may be regularized on *as is basis*.



Agenda 4(a) (Annexure-I)

3. Dinutuximab (Quarziba) medicine : (page 217)

- The estimated cost of the therapy course is around Rupees 63 lakhs and it has to be imported.
- Patients and their kin are finding it difficult to pay the IGST rate of 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
- Representation received:
 - IGST exemption on import of the cancer medicine .
- Fitment Committee recommendations:
 - IGST may be exempted on Dinutuximab (Quarziba) medicine when imported for personal use.



Agenda 4(a) (Annexure-I)

4. Medicines and Food for Special Medical Purposes used in treatment of rare diseases: (pages 217-218)

- As part of post Budget 2023-24, Basic Customs Duty (BCD) exemption has been given to drugs/medicines and Food for Special Medical Purposes (FSMP) when imported for 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 FSMP.
- These exemptions have been given based on recommendations of Ministry of Health and Family Welfare.
- **Fitment Committee recommendation:**
 - IGST may be exempted on medicines and Food for Special Medical Purposes used in the treatment of rare diseases enlisted under the National Policy for Rare Diseases, 2021 which are imported for personal use subject to existing conditions and FSMP when imported by Centres of Excellence for Rare Diseases or any person or institution on recommendation of any of the listed Centres of Excellence.



Agenda 4 (a) (Annexure-I)

5. Trauma, Spine and Arthroplasty implants: (page 218-219)

- Earlier there were two entries @ 5% and @ 12% for the goods falling under 9021. Duality of rate on similar goods falling under the same CTH 9021 was causing confusion.
- Accordingly, on the recommendations of 47th GST Council meeting, GST rate of 5% was fixed on all goods falling under heading 9021 in order to bring uniformity.
- Entry at S. No. 255 A of Schedule I of notification No. 01/2017-CT Rate was inserted wef 18.07.2022 to implement the recommendation.
- **Representation received:**
 - to issue a clarification for period prior to the 18.07.2022.
- **Fitment Committee recommendation:**
 - To regularize the matter for the period prior to 18.07.2022 on “as is basis” in view of genuine interpretational issues



Agenda 4(a) (Annexure-I)

6. Raw cotton: (pages 219-220)

- Supply of raw cotton by an agriculturist to any registered person is taxable under reverse charge mechanism.
- 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 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.
- Representation received:
 - to clarify that raw cotton supplied by agriculturists to cooperatives is not taxable under reverse charge mechanism.
- Recommendations of Fitment Committee :
 - May be clarified that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply to the cooperatives (being a registered person) attracts 5% GST under reverse charge mechanism.
 - The issue for the past periods may be regularized on *as is basis*.



Agenda 4 (a) (Annexure-I)

7. Consequential changes after introduction of new Foreign Trade Policy 2023:

(pages 220-221)

- New Foreign Trade Policy came into force w.e.f. 01.04.2023.
- 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.
- Consequential changes will need to be carried out in notifications, which would be technical in nature such as cross-referencing to new Trade policy
- Reference received :
 - Notifications to be aligned with FTP 2023
- Fitment Committee recommendation:
 - Consequential changes may be carried out in the notifications.



Agenda 4(a) (Annexure-I)

8. Imitation zari thread: (pages 221-222)

- In 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%. Only embroidery articles, embroidery in piece, in strips or in motifs (heading 5809, 5810) got covered.
- In 28th GST Council meeting, the Council recommended to 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.
- Input yarn, including kasab (thread), attracts 12% GST rate but embroidery articles attract 5% GST.
- Representation received:
 - to clarify the that imitation zari thread attracts 5% as imitation zari thread such as kasab, dabka are mentioned in the 5% entry.
- **Fitment Committee recommendations:**
 - GST on imitation zari thread or yarn known by any name in trade parlance may be reduced from 12% to 5%.
 - The issue for the past periods may be regularized on *as is basis*.



Agenda 4(a) (Annexure-I)

9. LD slag: (pages 222-223)

- LD Slag is a recyclable waste produced during the separation of molten steel slag from impurities in steel-making furnaces (200kg LD slag generated per ton of crude steel).
- Only 25% of the total slag generated in India is being reused/recycled. It is used for road project, sintering and iron-making.
- It is posing an environmental problem as it is getting accumulated over the years and less land is available for disposal of such huge quantities.
- The Council in the 23rd meeting recommended reduction of GST rate on BF Slag/Fly Ash to 5% based on the reason that it is an environmentally harmful product and its re-usage needs to be promoted.
- There is a need for better utilization of this waste and protection of environment.
- Representation received:
 - to reduce GST rate from 18% to 5% to encourage utilization
- **Fitment Committee recommendation:**
 - GST rate may be reduced on LD slag from 18% to 5%



Agenda 4(a) (Annexure-I)

10. Updating list of banks/entities in notification 50/2017-Cus, eligible for IGST exemption on import of gold, silver or platinum as per annexure 4B of HBP FTP 2023 : (page 223)

- 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.
- 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.
- Now, 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.
- RBL Bank and ICBC are authorized Banks mentioned in Para 4.40 of FTP 2023 (read with Appendix- 4B).
- **Recommendation of Fitment Committee :**
 - List 34 in notification 50/2017-Customs may be updated so as to include **RBL** bank and **ICBC** bank and list no. 34 may be updated as per revised Appendix 4B of FTP 2023 subject to confirmation from DGEP and DGFT.



Agenda 4(a) (Annexure-I)

11. Compensation cess on utility vehicles (MUV/XUV): (pages 223-224)

- 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)*”
- 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 the members to deliberate about compensation cess on other utility vehicles such as MUV, the Council directed the Fitment Committee to examine the same .
- It is seen that there were other utility vehicles also 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 NOT called as SUV but called as Multi Utility Vehicles (MUV) or multipurpose Vehicles or Crossover Utility Vehicles (XUVs) .
- **Fitment Committee recommendations:**
 - 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.
 - 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.



Agenda 4(a) (Annexure-I)

12. Compensation cess on pan masala, chewing tobacco etc: (pages 224-225)

- To implement the recommendations made by 49th GST Council, which accepted the GoM report, 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 retail sale price for such products.
- Representation received:
 - to determine rate of compensation cess in cases where it is not legally required to declare retail sale price
- Fitment Committee recommendation:
 - Earlier ad valorem rate as was applicable on 31st March 2023 for such goods may be notified by amending the compensation cess notification.



Agenda 4(a) (Annexure-I)

13. Dessicated coconut: (page 225)

- Entry 47 of Notification 2/2017-Central Tax (Rate) exempted coconuts fresh or dried, whether or not shelled or peeled.
- 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.
- Between the period 1.7.2017 to 27.7.2017 since there was no specific entry for dessicated coconut, suppliers may not have collected GST from consumers.
- Representation received:
 - to regularize the intervening period between issue of original notification & issue of corrigendum prescribing 12% GST rate.
- Fitment Committee recommendation:
 - The issue for the period 1.7.2017 to 27.7.2017 may be regularized on *as is basis*.



Agenda 4(a) (Annexure-I)

14. Areca leaf plates and cups: (page 225)

- Currently, plates and cups made up of all kinds of leaves/ flowers/bark are already exempt vide SI 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.
- Representation received:
 - to exempt areca leaf plates and cups
- **Fitment Committee recommendation:**
 - Since areca leaf plates and cups are already exempt, no action is required.



Agenda 4(b) (Annexure-II): Recommendations for no change (pages 226-237)

1. Agro-based biomass pellets : (pages 226-227)

- 5% GST rate has been prescribed on the basis of recommendation of:
 - ✓ 22nd GST Council Meeting (for Biomass briquettes) in October 2017 &
 - ✓ 28th GST Council Meeting (for solid bio fuel pellets) in July 2018.
- Ministry of Power has made the requested on the ground that they have mandated to use 5% of biomass co-firing in all coal based Thermal Power Plants under Mission SAMARTH and to promote its uptake.
- Issue of GST rate reduction on solid biofuel pellets / biomass briquettes or pellets was discussed in 37th and 47th meetings but was not recommended
- Representation received:
 - To reduce GST on agro-based biomass pellets to Nil
- **Fitment Committee Recommendation:**
 - Status quo may be maintained.



Agenda 4(b) (Annexure-II)

2. De-Oiled Rice Bran: (page 227)

- Prior to the 25th Council Meeting, rice bran (HS 2302) for use as feed attracted nil GST and 5% for other uses.
- The GST Council in its 25th meeting prescribed 5% GST on rice bran, irrespective of end use, and nil GST on de-oiled rice bran.
- Present request is has been justified on the grounds that rice bran is sold to animal feed producers directly from the un-organized market or billed as de-oiled rice bran so as to avail nil GST
- 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%
- Representation received:
 - To increase GST rate on De-oiled Rice Bran
- **Fitment Committee Recommendation:**
 - Status quo may be maintained.



Agenda 4(b) (Annexure-II)

3. Products prepared or manufactured by the inmates of Kerala Prison and correctional Services Department : (page 227)

- Request is to exempt products prepared or manufactured by the inmates of Kerala Prison and correctional Services Department.
- 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 and disrupt the ITC chain.
- **Fitment Committee Recommendation:**
 - Status quo may be maintained.



Agenda 4(b) (Annexure-II)

4. Bio-fertilizers and other such organic inputs: (page 228)

- Based on 25th GST Council meeting recommendations, GST rate on 12 specified bio-pesticides was reduced from 18% to 12 %.
- In its 31st meeting, the Council did not recommend reduction in GST on agricultural inputs including pesticides, fertilizers and plant growth regulators 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, the Council did not recommend any change in rate on fertilisers.
- In its 45th and 47th meetings, the Council did not recommend any change in the rates of fertilizers or other organic farm inputs.

Representation received:

- Present request is for reduction in GST rate on bio-fertilizers and organic inputs from 12% to 5%.

• Fitment Committee Recommendation:

- Status quo may be maintained.



Agenda 4(b) (Annexure-II)

5. Sungudi saree: (pages 228-229)

- In the manufacture of Sungudi Sarees, about 10,000 families of minority Sourashtra Community are engaged.
- However, sarees already attract concessional 5% GST and not 12% as mentioned in the representation
- Exempting GST will break 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.

Representation received:

- to reduce GST from 12% to Nil on sungudi saree.

• Fitment Committee Recommendation:

- Status quo may be maintained.



Agenda 4(b) (Annexure-II)

6. Upfront exemption for IAEA from payment of IGST and refund mechanism be done away with: (pages 229-230)

- IAEA gets refund of GST paid under Section 55 of the CGST Act which provides for the refund of GST paid by 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 by notification.
- Notification No. 13/2017-IGST (rate) issued to give effect to section 55 of the CGST Act.
- 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 and is prone to misuse.

Representation received:

- Upfront exemption from IGST on imports of their equipment instead of refund mechanism.

• Fitment Committee Recommendation:

- Status quo may be maintained.



Agenda 4(b) (Annexure-II)

7. Avgas: (page 230)

- Avgas is a 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 Rs. 35-40 lacs from a DGCA-approved reputed flight school which is majorly undertaken by upper-middle class strata of the society. Avgas is, therefore, not goods for common man purpose.
- Avgas is only a component of flying training cost and other major costs includes aircrafts costs, insurance, maintenance, instructors salaries etc.
- Reducing GST rate on Avgas is not likely to lead to significant reduction in training cost.
- ITC is available for GST paid on Avgas used for supplying pilot training services.

Representation received:

- Request is for reduction of GST rate from 18% to nil/ 1%.

• Fitment Committee Recommendation:

- Status quo may be maintained.



Agenda 4(b) (Annexure-II)

8. Machinery used in Sericulture Industry: (page 231)

- Such reduction/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.
- Similar issue related to Silk Reeling machineries (8445 40 40) was deliberated in 47th GST Council Meeting and no change was recommended.
- Representation received:
 - Request is to reduce GST on machinery used in sericulture industry and automatic reeling machinery from 18 % to 5/Nil.
- **Fitment Committee Recommendation:**
 - Status quo to be maintained.



Agenda 4(b) (Annexure-II)

9. Sports goods & Fitness equipment: (page 231-232)

- GST Council in its 14th Meeting held on 18.05.2017 recommended GST rate @ 12% for sports goods classified under CTH 9506 (other than articles and equipment for general physical exercise) (Sl. No. 230 of schedule II of notification 01/2017-Integrated Tax (Rate)).
- Earlier, Articles and equipment of general physical exercise, gymnastics etc attracted GST @ 28%. 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, athletics, padding pool etc etc.
- This would lead to an inverted duty structure as most of the inputs for sports goods like steel, rubber etc attract GST @ 18%.
- Representation received:
 - The present request has asked for a uniform GST rate of 5% on articles under CTH 9506.
- **Fitment Committee Recommendation:**
 - Status quo to be maintained.



Agenda 4(b) (Annexure-II)

10. Mega power projects: (page 232)

- Before inception of GST, Customs and Central Excise Duty exemption benefit was available to mega power projects
- Initially, this exemption was available only to the power projects certified as Mega Power Project by the MoP. Subsequently, with respect to **provisional** Mega Power Projects (which were yet to be issued a final Mega Power Project certificate), exemption from payment of customs and central excise duties were provided subject to submission of security (BG/FDR). This time limit for submission of final certificate was 36 months initially and subsequently increased first to 60 months in February, 2014 and then to **120 months** in **May, 2017** (before inception of GST) by amending this time-limit in **both** Customs and Central Excise notification, failing which duty involved was required to be paid along with interest.
- On the eve of inception of GST, the notification No. 12/2012-CE (S.N. 339) providing Central excise duty benefit to such projects, was superseded by notification No. 11/2017-CE dated 30.06.2017. The superseding notification did not have any reference to the exemption for Central Excise. Under GST, no exemptions have been provided.
- Representation Received:
 - Introduce concessions under GST based on the lines of those that existed in the Central Excise regime and that existed presently in Customs.
- Fitment Committee Recommendations:
 - Status quo to be maintained.



Agenda 4(b) (Annexure-II)

11. Apple Carton Boxes: (page 233)

- 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, wherein 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%**. After due deliberations, it was 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.
- In 49th GST Council it was decided that Himachal Pradesh will submit a detailed representation in this regard for examination by the Fitment Committee. Representation from CCT Himachal Pradesh was presented before the Fitment Committee.
- Generally, end-use based exemptions/concessional rates are difficult to administer and are generally litigation-prone.
- Representation Received:
 - to reduce GST rate on apple carton boxes from 18 to 5 %.
- Fitment Committee Recommendation:
 - Status quo to be maintained.



Agenda 4(b) (Annexure-II)

12 & 14. Two-wheeler and 4-wheeler *Flexi Fuel Vehicles* (FFV): (pages 233-234 & 235)

- Flexi fuel vehicles (FFVs) have an internal combustion engine and are capable of operating on normal petrol and/or any blend of petrol and ethanol.
- 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 vehicle. 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.
- Representation Received:
 - to reduce GST and compensation cess, has given the slightly higher cost of flexi fuel engines as a rationale for GST/cess reduction.
- **Fitment Committee Recommendation:**
 - Status quo to be maintained.



Agenda 4(b) (Annexure-II)

13. Agricultural products: (page 234)

- Farmers do not have to pay tax on supply of fresh fruits and vegetables.
- The request is general in nature.
- Representation received
 - to exempt GST on agricultural products and on agriculture- based items to protect the farmers.
- **Fitment Committee Recommendation:**
 - Status quo may be maintained.



Agenda 4(b) (Annexure-II)

15. Utensils made up of brass , bronze and other metals: (page 235-236)

- 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.
- Representation received:
 - to reduce GST on utensil of made up of metals.
- **Fitment Committee Recommendation:**
 - No change recommended.



Agenda 4(b) (Annexure-II)

16. Heavy feedstock, Vacuum Gas Oil / Reformates, etc: (page 236)

- This issue was deferred in last Fitment Committee meetings held in June & September, 2022 as inputs were awaited from Ministry of Petroleum and Natural Gas (MoPNG).
- Fitment Committee had noted that 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 do not justify a reason for reduction in rate.
- Representation received
 - to reduce GST rate on heavy feedstock, Vacuum Gas Oil / reformates, etc from 18% to nil.
- **Fitment Committee Recommendation:**
 - Status quo may be maintained.



Agenda 4(b) (Annexure-II)

17. All bakery products manufactured and sold by MSME: (pages 236-237)

- Rusks, toasted bread and similar toasted products attract GST rate of 5%.
- Bakery products like Pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products [other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products] attract GST rate of 18%.
- Small manufacturers/traders in MSME sector have the option to avail threshold exemption and composition scheme.
- Pre-GST incidence on most bakery products on which rate reduction is sought was 18% or more.
- Providing source based exemption to MSME sector for specific products like bakery products will be difficult to monitor and will cause distortion.
- Representation received
 - to reduce rate on all bakery products manufactured and sold by MSME to 5%.
- **Fitment Committee Recommendation:**
 - Status quo may be maintained.



Agenda 4(c) (Annexure-III): Issue deferred for further examination (pages-238-246)

1. Millet-based products: (pages 238-240)

- Classification and tax treatment of millet mix at par with cereal flours 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.
- Representation received:
 - Request is to prescribe 5% GST rate on 'millet-mix' containing 90% millets.
- **Fitment Committee Recommendations:**
 - Deferred for in-depth study



Agenda 4(c) (Annexure-III)

2. Khari, Cream Rolls (Bakery products): (page 240)

- Currently, concessional GST rate of 5% is applicable on Rusks, toasted bread and other toasted products
- 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) attract GST rate of 18%.
- The matter was deferred by the 47th GST Council for further examination
- Representation received:
 - to clarify that khari and cream roll should get covered under “rusk, toasted bread and similar toasted products”.
- **Fitment Committee Recommendations:**
 - Deferred for in-depth study regarding the nature of product and process of preparation before making any suggestions.



Agenda 4(c) (Annexure-III)

3. Sugar-boiled confectionary: (pages 240-241)

- Currently, sugar- boiled confectionary attracts 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.
- 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.
- Representation received:
 - to clarify regarding the scope of the product ‘sugar-boiled confectionary’.
- **Fitment Committee Recommendations:**
 - Deferred for industry consultation



Agenda 4(c) (Annexure-III)

4. Steel Scrap: (page 241-246)

- Request to reduce GST rate from 18 % has not been accepted by GST Council in its 47th meeting. The only issue referred to Fitment committee for deliberations is regarding levy of GST **on RCM basis**.
- During deliberations in 47th meeting, member from Karnatak suggested for detailed study and member from Punjab suggested for deferment for want of detailed consultation.
- After consultation with stakeholders and industry, State of **Karnataka** suggested, inter alia 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.
 - to prevent the evasion and to create conducive business atmosphere, few measures were recommended such as: introduction of trace and track mechanism, better registration procedures, registration of e-way bills if that commodity is registered to be supplied, ITC only if invoice is registered etc.
- **Punjab** has *inter alia*, suggested:
 - to tax iron and scrap on RCM and exempt supply of scrap in the hands of traders
 - e-way bill should be mandatory for all transactions in scrap irrespective of value.
- **Fitment Committee Recommendations**:
 - Deferred: to create a **Committee of officers** to study the issue holistically and to come up with workable solutions.



Recommendations of the Fitment Committee: Services

Agenda 4 (d) (Annexure-IV): Changes in GST rates/ issue clarification (page-247-260)

1. Exempt GST on satellite launch services provided by private organizations (pages 247-247)

- Satellite launch services supplied by ISRO, Antrix Corporation Ltd (ACL) and New Space India Ltd (NSIL) are exempt from GST. However this exemption is not applicable to satellite launch services provided by private organisations.
- 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.

• Recommendations of Fitment Committee

- The exemption may be extended to satellite launch services provided by private organizations with a view to provide level playing field.



Agenda 4(d) (Annexure-IV)

2. Rectification in item at Sl. No. 3(ie) of notification No. 11/2017-CTR (pages 247-248)

- Sl. No. 3(ie) of notification No. 11/2017-CTR dated 28.06.2017 currently reads as “(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 (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.”
- On the recommendations of 47th GST Council items at sl. No. 3(iv), (v) and (vi) of the above notification have been omitted vide notification No. 03/2022-CTR dated 13.07.2022.
- 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.

• Recommendations of Fitment Committee

- The anomaly may be rectified 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.



Agenda 4(d) (Annexure-IV)

3. Omission of clause (h) of explanation to the entry at Sl. No. 24 (i) of the notification No. 11/2017 CTR (pages 248-248)

- 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.

• Recommendations of Fitment Committee

- The anomaly may be rectified by omitting the 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




Agenda 4(d) (Annexure-IV)

4(a). Exercise of option by Goods Transport Agencies (GTAs) to pay GST under Forward Charge Mechanism (FCM) (pages 248-250)

- 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 deadline for exercising this option for Financial Year 2023-2024 was 15th March, 2023.
- Representations were received that some of the GTAs could not file declaration by 15th March, 2023 for various reasons including the presumption that the GTAs who had already opted for FCM are not required to file option every year.
- Representations were also received that GTAs who commenced business after 15th March will not be able to exercise option for the FY 2023-2034.


Agenda 4(d) (Annexure-IV)

4(a). Exercise of option by Goods Transport Agencies (GTAs) to pay GST under Forward Charge Mechanism (FCM) (contd....)(pages 248-250)

- The following **two changes** were made with the approval of **GST Implementation Committee (GIC)** to resolved the issues in view of the urgency involved:
 - The last date for exercising the option to pay GST under FCM was extended from 15th March, 2023 to 31st May, 2023 and
 - GTAs who commence new business or cross registration threshold during any Financial Year, have been allowed 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.
 - The above changes were notified w.e.f **09.05.2023** 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.
- **Recommendations of Fitment Committee**
- As a trade friendly measure, the requirement to exercise option to pay GST under forward charge every year may be done away with. 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 declaration that they want to revert to reverse charge mechanism (RCM). 

Agenda 4(d) (Annexure-IV)

4(b). Notifying 1st January of preceding Financial Year as start date and 31st March of preceding Financial Year as end date for filing of option by Goods Transport Agencies (GTAs) to pay GST under forward charge (pages 250-250)

- 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 Financial Year 2024-2025 would be 1st April, 2023.
 - Keeping start date for exercise of option for a FY as 1st April of the preceding Financial Year is not desirable as this may give rise to false impression to the GTAs that they have exercised the option for the current Financial Year .
- **Recommendations of Fitment Committee**
- The start date may be prescribed as 1st January of the preceding Financial Year.
 - The last date for filing the option may be changed from 15th March to 31st March of preceding Financial Year.
- 

Agenda 4(d) (Annexure-IV)

5. Amendment to 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. (pages 250-252)

- The place of supply (PoS) for transportation of goods is '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 do not qualify to be an export of service and is thus, taxable. However, on the same service supplied by a Foreign Shipping Line (FSL) to foreign exporter, both being outside India, FSLs do not pay GST.
- To provide level playing field to ISLs, liability on such transportation service supplied by FSLs 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 RCM liability placed on the importers.
- In order to restore level playing field to ISLs, the PoS of service of transportation of goods has been changed from 'destination of goods' to 'location of recipient' vide 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. [For a service to qualify as export of service, its PoS should be outside India].

Agenda 4(d) (Annexure-IV)

5. Amendment to 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 (contd...) (pages 250-252)

- Once the provisions of Finance Act, 2023 are notified, the provisions in notification Nos. 8/2017-ITR, 9/2017-ITR and 10/2017-ITR, making the importer liable to pay GST on ocean freight paid to FSLs under RCM will become redundant.
- **Recommendations of Fitment Committee**
- The provisions which were introduced in the said notifications to provide level playing fields to ISLs have lost relevance may be amended/deleted.
- The proposed amendments/deletions may be synchronized with date of notification of Section 162 of Finance Act, 2023.



Agenda 4(d) (Annexure-IV)

6. Clarify whether services provided by director in his personal/private capacity to company/body corporate are subject to reverse charge mechanism (pages 252-252)

- 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 has been raised whether services supplied by a director of a company in his personal capacity such as renting of immovable property to the company or the body corporate is taxable under Reverse Charge Mechanism.

• Recommendations of Fitment Committee

- It may be clarified by way of circular that services supplied by a director of a company to the company in his private or personal capacity such as supplying services by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by a director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.



Agenda 4(d) (Annexure-IV)

7. Clarify that the food or beverages supplied at cinema hall is taxable as restaurant service(pages 252-255)

- 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.

• Recommendations of Fitment Committee

- It may be clarified by way of a circular that the food or beverages served in a cinema hall is taxable as restaurant service as long as:
 - the food or beverages are supplied by way of or as part of a service and
 - 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 together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.



Agenda 4 (e)(Annexure-V): Recommendations for no change (page-261-264)

1. Exempt IGST on purchase of aircraft and aircraft lease payment (pages 261-261)
 - 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.
 - Exempting IGST on purchase/import of aircraft will be detrimental to the 'Make in India' initiative of the government and the nascent aircraft manufacturing industry in India.
 - 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.
- **Recommendations of Fitment Committee**
 - Status Quo to be maintained



Agenda 4 (e) (Annexure-V)

2. Exempt GST on the services by the way of granting affiliation to schools by Central Board of Secondary Education (CBSE) for conduct of secondary stage examinations in schools (pages 261-263)
 - 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 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%.
- **Recommendations of Fitment Committee**
 - Status Quo to be maintained



Agenda 4 (e) (Annexure-V)

3. Exempt GST on digital news subscription (pages 263-264)

- Services by way of online/digital news subscription comes under the heading 9984 - Telecommunications, broadcasting and information supply services which attract GST @ 18%. Supply of news in digital form is essentially different from the printed news papers in its constitution, distribution and transmission
- Subscription charges for online news vis-à-vis print media have been examined. It is found 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 lower.
- Even after being taxed at 18%, subscription for online/digital newspaper is available at considerably lower price. Therefore, the argument of trade that the 18% rate hinders 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 inputs i.e. newsprint attracts GST @5%, however, in case of e-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.

• Recommendations of Fitment Committee

- Status quo to be maintained



Agenda 4 (f) (Annexure-VI): Issue deferred for further examination (page-265-274)

1. 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 (pages 265-267)

- 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 has considered hostel accommodation at par with hotel accommodation.
- As a result, the service of hostel accommodation prized below Rs. 1000/- a day is now taxable @ 12% w.e.f 18.07.2022 provided charges are Rs. 7500/- or less per day.
- However, in the case of Taghar Vasudeva Ambrish, the Hon'ble Karnataka High 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 residential dwelling for use as residence.

Agenda 4(f) (Annexure-VI)

1. 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 (contd...)(pages 265-267)
 - Therefore, if the hostel accommodation is considered as the hotel accommodation in line with the circular dated 12.02.2018, it is taxable and if it is considered as residential dwelling, as held by the Hon'ble Karnataka High Court, it is exempt from GST.
 - The department has filed civil appeal before the Hon'ble Supreme Court of India against the Hon'ble Karnataka High judgement. The matter is sub-judice.
- **Recommendations of Fitment Committee**
 - Since the matter is sub-judice, it may be deferred.



Agenda 4(f) (Annexure-VI)

2. Exempt services provided by District Mineral Foundations (DMFs) (pages 267-268)
 - 45th GST Council (**SI.No.7 of Annexure-VI, Agenda No. 14**) deferred the matter stating that the issue was not clear. Further, the council 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. *However, no reply in the matter has been received so far.*
- **Recommendations of Fitment Committee**
 - The matter may be deferred till reply is received from State of Odisha.



Agenda 4 (f) (Annexure-VI)

3. Clarify whether reimbursement of electricity charges received by the Real estate companies, malls, airport operators etc. from their lessees/occupants is exempt from GST (pages 268-269)

- The issue was discussed in the Fitment Committee meetings held on 25.04.2023 and 09.06.2023
- Members were 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. However, the same have not been received so far.

• Recommendations of Fitment Committee

- The matter may be deferred till the receipt of information.



Agenda 4(f) (Annexure-VI)

4. Clarify whether ITC credit 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 (pages 269-271)

- 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.

• Recommendations of Fitment Committee

- The matter may be deferred.



Agenda 4(f) (Annexure-VI)

5. Clarify that job work activity for processing of “Barley” into malt for alcoholic beverages industry attracts GST @ 5% and in case it is held that GST @18% i.e., leviable, to regularize for past on ‘as is basis’ (pages 271-272)

- 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.

- **Recommendations of Fitment Committee**

- The matter may be deferred.



Agenda 4(f) (Annexure-VI)

6. Apply uniform GST rate of 5% on Business Correspondent services provided in both rural/urban areas. (pages 272-274)

- 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.

- **Recommendations of Fitment Committee**

- The matter may be deferred.



Agenda 4(Part II) (g) :

Stand alone agenda: deferred from 47th GST Council meeting (Addendum to Vol. III, pages -71-74)

- A proposal to specify a positive list of 12 services under Sr. No. 3/3 A of notification 12/2017-CT(R) dated 28.06.2017 was placed before the 45th GST Council. 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.
 - **Entry at Sr. No. 3:** exempt supply of pure services 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
 - **Entry 3A :** exempt composite supplies (goods component 25% or less) supplied to Central Government, State Government or Local Authority by way of activity in relation to Municipal or Panchayat functions under Article 243G or 243W of the Constitution
- There was a similar Service tax exemption. However, in view of disputes, 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*
- As per the direction of the 45th GST Council, the list was circulated to States. Comments were received from West Bengal, Bihar and Tamil Nadu. The issue was further discussed at length in the Fitment Committee.
- In 47th GST Council, Fitment recommended pruned list of [6 services](#).
- The recommendations of Fitment Committee was placed before 48th GST Council meeting held on 17.12.2022 held vide video conference.
- Some states 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.

Recommendations of Fitment Committee on positive list of services to be specified in **Sl. No. 3/3A of notification No. 12/2017-CT (R) dated 28.06.2017**

A. Entry 3 and 3A may be reworded to omit the words “ in relation to” as below:

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----

B. Following list of 12 services may be specified under the entry:

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.”*

C. Exemption may be extended to “Public Authority” and 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.”*



THANK YOU

FACT SHEET

Casinos, Race Courses & Online Gaming

50th GST Council Meeting

11th July, 2023

1

Legal Framework

- GST - levied on the **supply of goods and services**.
- **Goods** include **actionable claims** as per section 2(52) of the CGST Act, 2017.
- **Actionable claim** means a claim to any beneficial interest in movable property not in the possession of the claimant where such beneficial interest is existent, accruing, confidential or contingent.
- As per **Entry 6 of Schedule III of the CGST Act, 2017**, actionable claims in the form of lottery, betting and gambling are taxable.

2

Background

- Actionable claims in the form of lottery, betting and gambling attract 28% GST (Entry 228 & 229, Schedule IV, Nottf. No. 1/2017-CTR) on full face value of bets placed (Rule 31A, CGST Rules 2017).
- Taxation of lottery is settled. (SC decision in Skill Lotto case) Rule 31A, CGST Rules, 2017 was also upheld in the said case.
- Online gaming companies claiming their supply of services under SAC 998439 (other on-line content) which attracts 18%.
- Casinos and race clubs are classifying their supply under SAC 9996 (gambling & betting services) which attract 28%.
- No specific mention of casinos, race courses and online gaming in Entry 6, Schedule III.

3

Casinos

- Currently, Casinos operational in Goa and Sikkim. Yet to be operational in Daman.

Pre GST (Goa)			GST (Current)		
Tax	Rate	Value	Tax	Rate	Value
Entertainment tax (entry ticket)	Rs 1000/- (2016-17)	Per person	GST	28%	100% of the face value of the bet
Entertainment tax (gaming revenue)	15%	Sale of chips/coins or the receipts received by the proprietor/ operator towards casino games either on slot machine or table games or any other games provided in the casino.			
As per Goa that in practice tax was being paid @ 15% on GGR*.					
* GGR (Gross Gaming Revenue) means net value after deducting the chips/coins returned by players					

• Present Practice:

GST @28% is being paid on GGR in both Sikkim and Goa.

4

Casinos -View of States

Sikkim & Goa
Tax Casinos @ 28% on GGR

5

Casinos – Tax Revenue

(in Rupees Crore)

GST Collected				
Centre/State	FY	HSN	Taxable Value [GGR]	GST
Goa (Centre)	2017-18	999692	93.94	26.3
	2018-19	999692	139.19	38.97
	2019-20	999692	112.45	31.49
	2020-21	999692	48.84	13.67
	2021-22	999692	147.82	41.39
	2022-23 (Nov)	999692	80.05	22.41
	Total		622.28	174.24
Goa (State)	2017-18	999692	583.73	163.45
	2018-19	999692	986.35	276.18
	2019-20	999692	974.46	272.85
	2020-21	999692	431.65	120.86
	2021-22	999692	739.25	206.99
	2022-23 (Nov)	999692	987.47	276.49
	Total		4702.91	1316.81
Sikkim	2017-18	999692	22.90	6.19
	2018-19	999692	43.58	11.58
	2019-20	999692	36.46	9.52
	2020-21	999692	19.21	5.16
	2021-22	999692	41.52	11.14
	2022-23	999692	56.78	14.15
	Total		220.46	57.74
Grand Total			5545.66	1548.79

6

Race Courses

- Horse Racing Clubs operate in 7 cities, - Mumbai, Hyderabad, Chennai, Kolkata, Bengaluru, Mysore and New Delhi.

Pre GST			GST [Current tax structure]		
Tax	Rate	Value	Tax	Rate	Value
Service Tax on tote commission	15%	On 20% commission retained by the race club from bets placed in the totalizator.	GST	28%	100% of the face value of the bet or the amount paid into the totalisator
Service Tax on allowing access to race course	15%	On the price of entry ticket.			
Entertainment tax	29% (weighted average)	On the price of entry ticket			
Betting/Totalisator tax	8% - 21% in different states	On the full face value of the bets placed			

7

Race Courses -Present Practice

Race Club	Rate	Value
Royal Western India Turf Club	28%	Full value of bet
Royal Calcutta Race Club	28%	Full value of bet
Delhi Race Club	28%	Full value of bet
Bangalore Turf Club	28%	<ul style="list-style-type: none"> • July, 2017 – Jan, 2019 – on commission/margin • Feb, 2019 – June, 2021 – on full value of bets • June, 2021 – till date – on commission/margin [Karnataka HC has ruled in favour of Bangalore Turf Club. Dept has filed appeal in SC]
Mysore Race Club	28%	<ul style="list-style-type: none"> • July, 2017 – 22nd Jan, 2018 – on commission • 23rd Jan, 2018 – 31st Jan, 2019 - on full value of bets (paid under protest and writ is pending in HC) • 1st Feb, 2019 – May, 2023 – on full value of bets • 01st June, 2023 onwards – on commission
Hyderabad Turf Club	28%	Commission/Margin [Department has booked cases (Demanding GST @ 28% on the total face value of the bets received by the Club). Case is pending before the HC of Telangana state.]
Madras Race Club	28%	Commission/Margin

8

Race Courses – Tax Revenue

(Value in Rupees Crore)

Horse Racing		
Financial Year	Taxable Value	GST(Actual)
2017-18	477.04	133.39
2018-19	690.35	188.09
2019-20	882.82	245.32
2020-21	148.20	40.81
2021-22	219.59	59.57
2022-23	291.75	78.50
Total	2709.75	745.67

9

Race Courses

- Horse Racing may be taxed
 - @ 28%
 - on full value of the bets placed with bookmakers/totalisator

10

Online Gaming

Current GST tax structure		
Tax	Rate	Value
GST	28%	100% of the face value of the bet

Present Practice:

- Online gaming companies are paying GST @18% on platform fees.

11

Online Gaming – Tax Revenue

Financial Year	Maharashtra	Uttar Pradesh	West Bengal	Panchkula Zone	Bangalore Zone	Sikkim	Total of GST (6 States/Zones)
2017-18	33.84	107.50	0.00	0.00	3.77	1.96	147.07
2018-19	145.01	144.12	0.00	0.00	17.05	3.85	310.03
2019-20	631.60	155.15	0.00	49.64	100.22	4.22	940.83
2020-21	867.76	119.38	1.61	29.35	349.97	5.12	1373.19
2021-22	885.89	244.60	10.17	156.38	379.64	6.22	1682.90
2022-23 [till Nov]	959.40	166.24	7.72	169.30	-	10.87	1313.53

**Sample data from 6 States/Zones*

12

Demand Notices/Litigation

- Three SCNs issued by DGGI, CBIC wherein the revenue involved is Rs. 22583 Crore.
- States such as Kerala, Tamil Nadu, Telangana, Andhra Pradesh and Karnataka banned online gaming/gambling. However, the same has been stayed by Court orders. Tamil Nadu has issued an ordinance.

Case	High Court	Issue	Decision of High Court	Appeals filed
Gurdeep Singh Sachar Vs UOI & Ors (CRLPIL No. 22/2019)	Bombay High Court	1. Dream 11 – game of skill or chance? 2. GST on Dream 11?	1. Dream 11 is a game of skill. 2. It is an actionable claim but not in the form of betting and gambling. Therefore, it is neither supply of goods nor supply of services, thus clearly exempted from levy of any GST.	1. Appeal filed by State of Maharashtra. The High Court order has been stayed vide Supreme Court vide order dated 06.03.2020. 2. Review petition filed by UOI before the Bombay High Court is pending.
Varun Gumber Vs UT of Chandigarh & Ors (CWP No. 7559/2017)	Punjab & Haryana High Court	Dream 11 – game of skill or chance?	Dream 11 is a game of skill. [Case was in the context of police laws of the state and UOI was not a party to the case]	An appeal filed by Varun Gumber in the Supreme Court was dismissed.
Gameskraft Technologies (WP 19570/2022) [SCN demanding Rs. 20,989 Crore]	Karnataka High Court	GST on online Rummy and other games	GST Demand Notice has been set aside.	SLP is being filed in Supreme Court on advise of ASG.
Myteam 11 Fantasy Sports Vs UOI & Ors (DBCWP 1100/2023)	High Court Of Rajasthan at Jaipur	GST on online Rummy, poker & other games	No coercive action to be taken by GST Authorities.	Final order (High Court) is pending.

Demand Notices/Litigation

Case	High Court	Issue	Decision of High Court	Appeals filed
Chandresh Sankhla Vs. The State of Rajasthan & Ors (DBCWP No. 6653/2019)	High Court Of Rajasthan at Jaipur	"Dream 11" alleged to be betting of cricket team and amounting to gambling.	Dream 11 is not betting and gambling. <ul style="list-style-type: none"> • Scope of review petition filed in the Bombay HC (Gurdeep Singh Sachar case) - only w.r.t GST and not to re-visit the issue as to whether gambling is or is not involved. • "Dream 11" - <i>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...</i> 	1 SLP filed by Avinash Mehrotra (SLP(C) No. 011794/2021) was dismissed in Supreme Court.
Ravindra Singh Chaudhary Vs UOI & Ors (DBCWP No. 20779/2019)	High Court Of Rajasthan at Jaipur	(1) Whether online fantasy sports games offered on Dream 11 platform are "gambling/betting"? (2) GST on such online fantasy sports games offered by Dream 11?	(1) Online fantasy sports games offered on Dream 11 platform are games of mere skill as - <ul style="list-style-type: none"> • Result of fantasy game depends on skill of participant and not sheer chance; • Winning or losing of virtual team created by the participant is also independent of outcome of the game or event in the real world. (2) In light of the above findings on the issue of gambling/betting, Court deemed it appropriate to leave the said second issue for the GST authorities to consider in accordance with law.	1 SLP filed by Avinash Mehrotra (SLP(C) No. 015791/2022) was dismissed in Supreme Court.

Online Gaming - Potential



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Online Gaming

- Online gaming may be taxed
 - @ 28%
 - on full value of the bets placed

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Imperative to take a decision

- Litigation - a time consuming process
- Substantial revenue Implication

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Issue No. 1

- 1) Whether any amendment in law is required?
- 2) Whether any amendment in law is required to specifically include casinos, race courses and online gaming under taxable actionable claims to remove ambiguity.

Merits

- Avoid litigation
- Ease of administration
- Ease of Doing Business

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Issue No.2

Whether to tax online gaming, horse racing and casinos on:

- Full face value
- GGR/platform fees
- Deemed Value (e.g. Some exemption from value)

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Issue No 3

What should be the rate of tax ?

- 28%
- 18%
- 12%

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Impact on Lottery

- Taxation of lottery is settled and are paying 28% on full face value of the lottery ticket.
- Decisions taken on Online Gaming, Casino horse racing has implications on lottery.
- Of late, Lottery Trade Associations are representing that 28% GST should be levied on GGR (Revenue after deduction of prize money paid/payable)

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Revenue Implications

Activity	Tax Rate	Value*	Potential Revenue* (in Rs. Cr)
Casinos	28%	Full face value	2070
		GGR/platform fees	310
	18%	Full face value	1330
		GGR/platform fees	199
	12%	Full face value	887
		GGR/platform fees	133
Race Courses	28%	Full face value	543
		GGR/platform fees	98
	18%	Full face value	350
		GGR/platform fees	63
	12%	Full face value	234
		GGR/platform fees	42
Online gaming	28%	Full face value	11928
		GGR/platform fees	1789
	18%	Full face value	7668
		GGR/platform fees	1150
	12%	Full face value	5112
		GGR/platform fees	766

*Taxable value & Potential revenue for casinos, online gaming (sample data of 6 State/zone) and race courses has been back calculated based on 6 years data received.



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Betting Tax – Pre GST

Clubs	State	Rate of Betting Tax
Royal Western India Turf Club	Maharashtra	20%
Hyderabad Turf Club	Telangana	15%
Madras Race Club	Tamil Nadu	21%
Royal Calcutta Turf Club	West Bengal	10%
Bangalore Turf Club	Karnataka	8%
The Mysore Race Club	Karnataka	8%
Delhi Turf Club	New Delhi	20%

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Online Gaming – MeitY Guidelines

- MeitY has notified amendments to *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*:

✓“online real money game” means an **online game where a user makes a deposit in cash or kind with the expectation of earning winnings on that deposit**. Explanation.—In this clause, “winnings” means any prize, in cash or kind, which is distributed or intended to be distributed to a user of an online game based on the performance of the user and in accordance with the rules of such online game.

✓“permissible online game” - an online real money game that does **not involve wagering** on any outcome.

✓Verification of online real money game.— *The online gaming self-regulatory body, upon an application made to it by its member in respect of an online real money game, may declare such online real money game as a permissible online real money game, if, after making such inquiry as it deems fit, it is satisfied that— (a) the online real money game does not involve wagering on any outcome; and....*

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Potential Revenue - Casinos

If Casinos are taxed @ 28%/ 18%/12% on full value of the bets placed

GST Collected				Potential Revenue			
State	FY	Taxable Value [GGR]	GST	Taxable Value [Assumed Full Bet Value]	GST @28%	GST @ 18%	GST @12%
Goa (Centre)	2017-18	93.94	26.30	626.27	175.35	112.73	75.15
	2018-19	139.19	38.97	927.93	259.82	167.03	111.35
	2019-20	112.45	31.49	749.67	209.91	134.94	89.96
	2020-21	48.84	13.67	325.60	91.17	58.61	39.07
	2021-22	147.82	41.39	985.47	275.93	177.38	118.26
	2022-23 (Nov)	80.05	22.41	533.67	149.43	96.06	64.04
Goa (State)	2017-18	583.73	163.45	3891.53	1089.63	700.48	466.98
	2018-19	986.35	276.18	6575.67	1841.19	1183.62	789.08
	2019-20	974.46	272.85	6496.40	1818.99	1169.35	779.57
	2020-21	431.65	120.86	2877.67	805.75	517.98	345.32
	2021-22	739.25	206.99	4928.33	1379.93	887.10	591.40
	2022-23 (Nov)	987.47	276.49	6583.13	1843.28	1184.96	789.98
Sikkim	2017-18	22.90	6.19	152.67	42.75	27.48	18.32
	2018-19	43.58	11.58	290.53	81.35	52.30	34.86
	2019-20	36.46	9.52	243.08	68.06	43.75	29.17
	2020-21	19.21	5.16	128.09	35.87	23.06	15.37
	2021-22	41.52	11.14	276.80	77.50	49.82	33.22
	2022-23	56.78	14.15	378.55	105.99	68.14	45.43
Total		5545.66	1548.79	36971.05	10351.89	6654.79	4436.53

*Based on backward calculation taking GGR as 15% of total taxable value

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Potential Revenue – Race Courses

If Race Courses are taxed @ 28%/ 18%/12% on full value of the bets placed

(in Rupees Crore)

Horse Racing						
GST collected			Revenue Potential			
Financial Year	Taxable Value	GST(Actual)	*Taxable Value (calculated)	GST @ 28%	GST @ 18%	GST @ 12%
2017-18	477.04	133.39	3022.26	846.24	544.01	362.67
2018-19	690.35	188.09	3715.22	1035.35	668.74	445.83
2019-20	882.82	245.32	2156.00	599.77	388.08	258.72
2020-21	148.20	40.81	378.21	105.23	68.08	45.39
2021-22	219.59	59.57	1007.50	280.37	181.35	120.90
2022-23	291.75	78.50	1400.43	389.22	252.08	168.05
Total	2709.75	745.67	11679.63	3256.17	2102.33	1401.56

*Based on backward calculation taking GGR as 15% of total taxable value where race clubs are paying on margin. Where race clubs are paying on full value of the bets placed, it has been duly incorporated in the taxable value₂₇ (calculated) accordingly.

Potential Revenue – Online Gaming

If Online Gaming is taxed @ 28%/ 18%/12% on full value of the bets placed

Tax collected								Potential Revenue				
Financial Year	Maharashtra	UP	WB	Panchkula Zone	Bangalore Zone	Sikkim	Total GST of States/Zones	Approx. Taxable Value [margin]	Approx. taxable value considering margin is 15%	GST @28%	GST @ 18%	GST @12%
2017-18	33.84	107.5	0	0	3.77	1.96	147.07	817.06	5447.04	1525.17	980.47	653.64
2018-19	145.01	144.12	0	0	17.05	3.85	310.03	1722.39	11482.59	3215.13	2066.87	1377.91
2019-20	631.6	155.15	0	49.64	100.22	4.22	940.83	5226.83	34845.56	9756.76	6272.20	4181.47
2020-21	867.76	119.38	1.61	29.35	349.97	5.12	1373.19	7628.83	50858.89	14240.49	9154.60	6103.07
2021-22	885.89	244.6	10.17	156.38	379.64	6.22	1682.90	9349.44	62329.63	17452.30	11219.33	7479.56
2022-23 (till date)	959.4	166.24	7.72	169.3	-	10.87	1313.53	7297.40	48649.30	13621.80	8756.87	5837.92
Total	3523.51	936.99	19.5	404.67	850.65	16.11	5751.43	31952.41	213016.06	59644.50	38342.89	25561.93

*Sample data from 6 States/Zones

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Annexure-6



Agenda



- 1 • Overview of GoM on IT system Reforms
- 2 • Agenda Items for 3rd Meeting of GoM and Decisions
- 3 • Conclusion



1. Overview of GoM on IT system Reforms

7/25/2023

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GoM on GST System Reforms

❖ Background:

- 45th meeting of GSTC, held on 18th Sept 2021: GoM reconstituted and TOR revised.
 - Subsumed the earlier GoM on IT challenges and revenue mobilization.
 - **TOR**
 1. Suggest measures to make the system more effective and efficient including changes in business processes;
 2. Identify sources of evasion & suggest changes in business processes & IT systems to plug revenue leakage;
 3. Identify and suggest use of data analysis towards better compliance / revenue augmentation;
 4. Identify mechanisms for better coordination between different tax administrations (States/Centre);
- **Three meetings held after change of composition of GoM w.e.f. September 21,2021**
 - First Meeting held on 21st October 2021
 - Second Meeting held on 10th February 2022 : Recommendations approved in 47th GST Council meeting.
 - Third Meeting held on 13th February 2023



Group of Ministers (GoM) on GST System Reforms



The Membership of GoM is as below:

#	Designation and State	
1	Deputy Chief Minister, Maharashtra	Convenor
2	Deputy Chief Minister, Haryana	Member
3	Deputy Chief Minister, Delhi	Member
4	Minister for Finance, Assam	Member
5	Minister for Finance, Planning, Commercial Taxes, Skill Development and Training and Legislative Affairs, Andhra Pradesh	Member
6	Minister for Finance and Parliamentary Affairs, Odisha	Member
7	Minister for Finance and Human Resources Management, Tamil Nadu	Member
8	Minister for Commercial Taxes, Chhattisgarh	Member



2. Agenda Items for 3rd Meeting of GoM and Decisions

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Agenda Items of 3rd GoM



#	Agenda
1	Hard locking of Table-4 of GSTR-3B
2	Tracking and identification of Non-Existent Tax Payers (NETP). It involves <ul style="list-style-type: none"> i. Cancellation/Suspension of Registration of Taxpayers (TP) ab-initio ii. Declaration of Taxpayer as NETP
3	Reporting of transactions by payment gateways & banks. To identify details of B2C sale, not reported by taxpayers where payment is received through POS machines.
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
5	<ul style="list-style-type: none"> i. Integration with Income Tax, ICEGATE and other data points. ii. Improving collection of data on import of services.
6	Additional Agenda items: <ul style="list-style-type: none"> i. MIS of commodities liable for RCM ii. MIS report of the Auto Populated interest on account of late payment.



Agenda Item 1: Hard locking of Table-4 of GSTR-3B

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Agenda Item: Hard locking of Table-4 of GSTR-3B



#	Agenda	Decisions of GoM
1	Hard locking of Table-4 of GSTR-3B with data from GSTR 2A/2B to control ITC Mismatch	<p>The GoM after due deliberations took a view that presently hard locking of Table 4 of GSTR-3B with GSTR 2A/2B data (ITC Available) is not feasible as taxpayers may face difficulties in business activities.</p> <p>The GoM approved :</p> <ol style="list-style-type: none"> 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 at Rs. 25 lakh or more) shall be implemented in phased manner. This will be on similar line of Rule 88C (liability mismatch between GSTR 1 and GSTR 3B). Where threshold of ITC gap is crossed, an intimation to be sent to taxpayer and a online facility to be created for taxpayer to furnish reason for such gap. Further, mechanism for verification and initiation of action in non-compliant cases is to be provided. In subsequent phase, filing of GSTR-1 to be blocked till the officer verifies and approve the reply filed by the taxpayer.



Agenda Item 2: Tracking and identification of Non-Existent Tax Payers (NETP)

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Agenda Item: Tracking and identification of Non-Existent Tax Payers (NETP)



- ❖ Fake / Non-Existent taxpayer denotes the entity which is only engaged in issuance of fake GST invoices i.e. without underlying supply of goods / services.
 - ❖ Intent to pass the fake GST credit to defraud the revenue.
 - ❖ The business activity declared in registration does not exists.
- ❖ GST registration is obtained by means of fraud or willful mis-statement like:
 - ❖ Declare Non-existent or incomplete address at the time registration. Or furnish fake / forged documents of address while taking registration.
 - ❖ Identity theft by using of credentials (ADHAR, PAN, etc) of persons without their knowledge.
 - ❖ Use of credentials (Mobile linked to ADHAR, PAN, etc) of innocent persons to get registration.
- ❖ Complex web / network of Fake / Non-Existent entities spread across the States / jurisdiction.
- ❖ Multi-stage layering till fake credit reaches to actual beneficiaries.
- ❖ Necessity to devise work flow based system to track the flow of fake credit.
- ❖ Consolidated information of Fake / Non-Existent entities would help in leveraging the capabilities of predictive analysis of suspected Fake / Non-Existent entities.



Agenda Item: Tracking and identification of Non-Existent Tax Payers (NETP)



#	Agenda	Decision of GoM
2	Tracking and identification of Non-Existent Tax Payers (NETP). (At present letter based requests are sent by State Tax Administrations to each other)	The GoM approved : <ol style="list-style-type: none"> a. Formulation of SOP for handling NETP (GSTN and Maharashtra will prepare SOP) b. Uniform policy for ab-initio cancellation of Registration of NETP across State/CBIC Tax Administration . An SOP in this regard to be issued by Policy Wing. c. Development of System driven solution to facilitate declaration of NETP by Tax Administration. d. Creation of facility to report NETP and Central repository for NETP to be accessible to all. e. System based communication of recipients of NETP among the States up to the jurisdictional officer f. Flagging of related entities of declared NETPs (including suppliers) for appropriate action. g. System based facility to create tasks of various actions against related parties (including suppliers) and recipients to be developed.



Agenda Item 3: Reporting of transactions by payment gateways & Banks

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Agenda Item: Reporting of transactions by payment gateways & Banks

#	Agenda	Decision of GoM
3	Reporting of transactions by Payment Gateways & banks: To capture details of B2C sale where payment is received through POS machines by the supplier	<ol style="list-style-type: none"> 1. 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. 2. It was proposed that data from all digital payment transactions that are processed through specific networks, such as NPCI for RUPAY, VISA, MASTERCARD, etc shall be compiled to estimate turnover of a business. However, peer-to-peer (P2P) digital payments were proposed to be excluded. 3. The convenor of GoM, directed to constitute an officers group & hold a meeting in this regard in Mumbai to develop a detailed methodology & business process to achieve the stated goal in Consultation with the RBI and the NPCI.



Agenda Item 4: HSN level reporting in GSTR-1

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Agenda Item: HSN level reporting in GSTR-1

#	Agenda	Decision of GoM
4	HSN level reporting in GSTR-1 : Integrating and auto-population of e-invoice/e-way bill data with Table 12 of GSTR1	<p>The GoM approved :</p> <ol style="list-style-type: none"> 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) 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.



Agenda Item 5:

- Integration of Income Tax, ICEGATE and other data points.
- Improving collection of data on import of services.

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Agenda Item: Integration of Income Tax, ICEGATE, other data: Import of Services

#	Agenda	Decision of GoM
5	<ul style="list-style-type: none"> • Integration of ICEGATE and Income Tax and other third party data for augmenting GST collection • Import of Services and evasion of Tax thereon. 	<ul style="list-style-type: none"> • The issue of integration of third party data to be addressed with the support of DoR. • The GoM approved the formation of a Committee of Officers from TPRU-1, GSTN, Center, State (Maharashtra) and RBI to examine how remittance data (from India to Abroad) can be used to identify volume of services import into India.

Agenda Item 6: Additional Agenda items related to MIS

7/25/2023

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Additional Agenda items related to MIS

#	Agenda	Decision of GoM
6	<p>Following MIS are required to augment revenue:</p> <ol style="list-style-type: none"> 1. Commodities liable for GST under RCM . 2. Auto populated interest on account of late payment. 	The GoM approved development of MIS.



3. Conclusion

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Conclusion

While the recommendations of GoM are specific, as general direction, the GST System should move in the following directions:-

1. Need for strengthening registration process by using biometric validations and premises verification etc. , to remove NETPs from the system.
2. Controlling flow of fake ITC at both the ends, i.e. the recipient and the supplier of a supply. Recipient should report B2B supply and pay tax on it and recipient should take ITC on such reported invoice.
3. Expanding use of third party data for better forecasting of turnover and other verifications of taxpayers.



THANK YOU!!

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Agenda Item 11: Implementation of GSTAT consequent to passing of Finance Act, 2023

Agenda

- The final Report and recommendations of the Group of Ministers (GoM) on constitution of Goods and Services Tax Tribunal constituted tabled before the GST Council in its 49th Meeting.
- Recommended to establish one GST Appellate Tribunal with a Principal Bench and State Benches. Each Bench of the Appellate Tribunal to consist of four members i.e. **two Judicial Members** and **two Technical Members, one Member from Centre and one from the State.**
- The report of GoM on GSTAT adopted by the Council with certain modifications.
- Amendments in CGST Act 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.
- 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.

Search-cum-Selection Committee

Section 110

(4) (a) The **Search-cum-Selection Committee for Technical Member (State)** of a State Bench shall consist of the following members namely:—

- (i) the Chief Justice of the High Court in whose jurisdiction the State Bench is located, to be the Chairperson of the Committee;
- (ii) the 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;
- (iii) Chief Secretary of the State in which the State Bench is located;
- (iv) one Additional Chief Secretary or Principal Secretary or Secretary of the State in which the State Bench is located, as may be nominated by such State Government, not in-charge of the Department responsible for administration of State tax; and
- (v) Additional Chief Secretary or Principal Secretary or Secretary of the Department responsible for administration of State tax, of the State in which the State Bench is located — Member Secretary; and

Search-cum-Selection Committee

b) the Search-cum-Selection Committee **for all other cases** shall consist of the following members, namely:—

- (i) the Chief Justice of India or a Judge of Supreme Court nominated by him, to be the Chairperson of the Committee;
- (ii) Secretary of the Central Government nominated by the Cabinet Secretary — Member;
- (iii) Chief Secretary of a State to be nominated by the Council — Member;**
- (iv) one Member, who—
 - (A) in case of appointment of a President of a Tribunal, shall be the outgoing President of the Tribunal; or
 - (B) in case of appointment of a Member of a Tribunal, shall be the sitting President of the Tribunal; or
 - (C) in case of the President of the Tribunal seeking re-appointment or where the outgoing President is unavailable or the removal of the President is being considered, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India; and
- (v) Secretary of the Department of Revenue in the Ministry of Finance of the Central Government — Member Secretary

Status of confirmation of Amendments to SGST/UTGST Act corresponding to formation of GSTAT

The States of Andhra Pradesh, Chhattisgarh, Gujarat, Kerala, Telangana, Rajasthan 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

For 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. 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. Meghalaya has also requested for this clarification.

S.No.	State Name	TOTAL Taxpayer	Revenue (Domestic) F.Year	No. of Benches requested by States in Agenda
1	Uttar Pradesh	1,798,288	2022-23 87969	5 (Lucknow, Varanasi, Ghaziabad, Agra and Prayagraj)
2	Maharashtra	1,676,761	270345	7 [Mumbai-2, Pune-2, Thane-1, Nagpur-1 & Aurangabad (Chhatrapati Sambhajinagar)-1]
3	Gujarat	1,142,794	114221	3 (Ahmedabad, Surat and Rajkot)
4	Tamil Nadu	1,113,313	104377	NA
5	Karnataka	985,729	122821	3(Bengaluru)
6	Rajasthan	842,067	45458	2
7	Delhi	778,692	55843	2 (Delhi)
8	West Bengal	717,527	58059	2(Kolkata)
9	Bihar	602,293	16547	1 (Patna)
10	Madhya Pradesh	509,039	36231	1 (Bhopal)
11	Haryana	508,566	86668	2 (Hisar & Gurugram)
12	Telangana	496,953	51830	2 (Hyderabad)
13	Andhra Pradesh	414,274	40232	3 (Vijayawada, Vishakhapatnam and Tirupati)
14	Kerala	399,701	27371	3 (Triruvananthapuram, Ernakulam & Kozhikode)
15	Punjab	384,053	20949	2 (Chandigarh & Mohali)
16	Odisha	320,506	49441	1(Cuttack)
17	Assam	221,656	13710	1 State Bench of GSTAT at Guwahati, Assam
18	Jharkhand	196,868	32019	1(Ranchi)
19	Uttarakhand	195,150	16845	1(Dehradun)
20	Chhattisgarh	171,573	31968	2 (Raipur & Bilaspur)
21	Jammu and Kashmir	136,285	5246	1 (Jammu & Srinagar on rotational basis)
22	Himachal Pradesh	120,679	8778	1 (Shimla)
23	Goa	41,960	5520	1 (Panaji)
24	Chandigarh*	30,436	2365	Common State Bench of Punjab (Chandigarh)
25	Tripura	30,147	883	1(Agartala)
26	Meghalaya	28,670	2075	Common State Bench of GSTAT at Guwahati, Assam
27	Puducherry	23,760	2373	1(Puducherry)
28	Arunachal Pradesh	17,137	1022	Common State Bench of GSTAT at Guwahati, Assam
29	Dadra and Nagar Haveli & Daman and Diu*	15,511	3771	Common State Bench of Maharashtra (Mumbai)
30	Manipur	13,891	614	Common State Bench of GSTAT at Guwahati, Assam
31	Sikkim	10,368	3155	Common Bench with Kolkata
32	Nagaland	10,212	566	Proposed one Bench
33	Ladakh*	7,907	333	Common State Bench of Jammu & Kashmir
34	Mizoram	7,534	418	1 (Aizwal)
35	Andaman and Nicobar Islands*	5,660	373	Common State Bench of W.B. (Kolkata)
36	Lakshadweep*	347	21	Common State Bench of Kerala
	Grand Total	13,976,308	1,320,420	37

* This has been proposed by GSTCS as these are the UT without legislature. This proposal is on the basis of previous Notification issued by DoR.

No. of Taxpayers more than 7.5 lakh				
S.No.	State Name	TOTAL Taxpayer	Revenue (Domestic) F.Year 2022-23	No. of Benches requested by States in Agenda
1	Uttar Pradesh	17,98,288	87969	5 (Lucknow , Varanasi, Ghaziabad, Agra and Prayagraj)
2	Maharashtra	16,76,761	270345	7 [Mumbai-2, Pune-2, Thane-1, Nagpur-1 & Aurangabad (Chhatrapati Sambhajanagar)-1]
3	Gujarat	11,42,794	114221	3 (Ahmedabad, Surat and Rajkot)
4	Tamil Nadu	11,13,313	104377	NA
5	Karnataka	9,85,729	122821	3(Bengaluru)
6	Rajasthan	8,42,067	45458	2 (Jaipur & Jodhpur)
7	Delhi	7,78,692	55843	2 (Delhi)

No. of Taxpayers less than 7.5 lakh				
S.No.	State Name	TOTAL Taxpayer	Revenue (Domestic) F.Year 2022-23	No. of Benches requested by States in Agenda
8	West Bengal	7,17,527	58059	2(Kolkata)
9	Bihar	6,02,293	16547	1 (Patna)
10	Madhya Pradesh	5,09,039	36231	1 (Bhopal)
11	Haryana	5,08,566	86668	2 (Hisar & Gurugram)
12	Telangana	4,96,953	51830	2 (Hyderabad)
13	Andhra Pradesh	4,14,274	40232	3 (Vijayawada, Vishakhapatnam and Tirupati)
14	Kerala	3,99,701	27371	3 (Triruvananthapuram, Ernakulam & Kozhikode)
15	Punjab	3,84,053	20949	2 (Chandigarh & Mohali)
16	Odisha	3,20,506	49441	1(Cuttack)
17	Assam	2,21,656	13710	1 State Bench of GSTAT at Guwahati, Assam
18	Jharkhand	1,96,868	32019	1(Ranchi)
19	Uttarakhand	1,95,150	16845	1 (Dehradun)
20	Chhattisgarh	1,71,573	31968	2 (Raipur & Bilaspur)
21	Jammu and Kashmir	1,36,285	5246	1 (Jammu & Srinagar on rotational basis)
22	Himachal Pradesh	1,20,679	8778	1 (Shimla)
23	Goa	41,960	5520	1 (Panaji)
24	Chandigarh*	30,436	2365	Common State Bench of Punjab (Chandigarh)
25	Tripura	30,147	883	1 (Agartala)
26	Meghalaya	28,670	2075	Common State Bench of GSTAT at Guwahati, Assam
27	Puducherry	23,760	2373	1 (Puducherry)
28	Arunachal Pradesh	17,137	1022	Common State Bench of GSTAT at Guwahati, Assam
29	Dadra and Nagar Haveli & Daman and Diu*	15,511	3771	Common State Bench of Maharashtra (Mumbai)
30	Manipur	13,891	614	Common State Bench of GSTAT at Guwahati, Assam
31	Sikkim	10,368	3155	Common Bench with Kolkata
32	Nagaland	10,212	566	Proposed one Bench
33	Ladakh*	7,907	333	Common State Bench of Jammu & Kashmir
34	Mizoram	7,534	418	1 (Aizwal)
35	Andaman and Nicobar Islands*	5,660	373	Common State Bench of W.B. (Kolkata)
36	Lakshadweep*	347	21	Common State Bench of Kerala

*This has been proposed by GSTCS as these are the UT without legislature. This proposal is on the basis of previous Notification issued by DoR.

No. of Taxpayers above 5 lakhs				
S.No.	State Name	TOTAL Taxpayer	Revenue (Domestic) F.Year 2022-23	No. of Benches requested by States in Agenda
1	Uttar Pradesh	1,798,288	87969	5 (Lucknow ,Varanasi, Ghaziabad,Agra and Prayagraj)
2	Maharashtra	1,676,761	270345	7 [Mumbai-2, Pune-2,Thane-1, Nagpur-1 & Aurangabad (Chhatrapati Sambhajnagar)-1]
3	Gujarat	1,142,794	114221	3 (Ahmedabad, Surat and Rajkot)
4	Tamil Nadu	1,113,313	104377	NA
5	Karnataka	985,729	122821	3(Bengaluru)
6	Rajasthan	842,067	45458	2 (Jaipur & Jodhpur)
7	Delhi	778,692	55843	2 (Delhi)
8	West Bengal	717,527	58059	2(Kolkata)
9	Bihar	602,293	16547	1 (Patna)
10	Madhya Pradesh	509,039	36231	1 (Bhopal)
11	Haryana	508,566	86668	2 (Hisar & Gurugram)

Taxpayers less than 5 lakh and more than 40,000				
S.No.	State Name	TOTAL Taxpayer	Revenue (Domestic) F.Year 2022-23	No. of Benches requested by States in Agenda
13	Andhra Pradesh	414,274	40232	3 (Vijayawada,Vishakhapatnam and Tirupati)
14	Kerala	399,701	27371	3 (Triruvananthapuram, Ernakulam & Kozhikode)
15	Punjab	384,053	20949	2 (Chandigarh & Mohali)
16	Odisha	320,506	49441	1 (Cuttack)
17	Assam	221,656	13710	1 State Bench of GSTAT at Guwahati, Assam
18	Jharkhand	196,868	32019	1 (Ranchi)
19	Uttarakhand	195,150	16845	1 (Dehradun)
20	Chhattisgarh	171,573	31968	2 (Raipur & Bilaspur)
21	Jammu and Kashmir	136,285	5246	1 (Jammu & Srinagar on rotational basis)
22	Himachal Pradesh	120,679	8778	1 (Shimla)
23	Goa	41,960	5520	1 (Panaji)

S.No.	State Name	No. of Taxpayers above 40,000		No. of Benches requested by States in Agenda
		TOTAL Taxpayer	Revenue (Domestic) F.Year 2022-23	
23	Jammu and Kashmir	136,285	5246	I (Jammu & Srinagar on rotational basis)
24	Dadra and Nagar Haveli & Daman and Diu*	15,511	3771	Common State Bench of Maharashtra (Mumbai)
25	Sikkim	10,368	3155	Common Bench with Kolkata
26	Puducherry	23,760	2373	I (Puducherry)
27	Chandigarh*	30,436	2365	Common State Bench of Punjab (Chandigarh)
28	Meghalaya	28,670	2075	Common State Bench of GSTAT at Guwahati, Assam
29	Arunachal Pradesh	17,137	1022	Common State Bench of GSTAT at Guwahati, Assam
30	Tripura	30,147	883	I (Agartala)
31	Manipur	13,891	614	Common State Bench of GSTAT at Guwahati, Assam
32	Nagaland	10,212	566	Proposed one Bench
33	Mizoram	7,534	418	I (Aizwal)
34	Andaman and Nicobar Islands*	5,660	373	Common State Bench of W.B. (Kolkata)
35	Ladakh*	7,907	333	Common State Bench of Jammu & Kashmir
36	Lakshadweep*	347	21	Common State Bench of Kerala

*This has been proposed by GSTCS as these are the UT without legislature. This proposal is on the basis of previous Notification issued by DoR.

S.No.	State/ Union Territory	Population (2011 Census)	No. in Crore
1	Uttar Pradesh	19,95,81,477	19.958
2	Maharashtra	11,23,72,972	11.237
3	Bihar	10,38,04,637	10.380
4	West Bengal	9,13,47,736	9.135
5	Andhra Pradesh	8,46,65,533	8.467
6	Madhya Pradesh	7,25,97,565	7.260
7	Tamil Nadu	7,21,38,958	7.214
8	Rajasthan	6,86,21,012	6.862
9	Karnataka	6,11,30,704	6.113
10	Gujarat	6,03,83,628	6.038
11	Odisha	4,19,47,358	4.195
12	Telangana	3,51,93,978	3.519
13	Kerala	3,33,87,677	3.339
14	Jharkhand	3,29,66,238	3.297
15	Assam	3,11,69,272	3.117
16	Punjab	2,77,04,236	2.770
17	Haryana	2,53,53,081	2.535
18	Chhattisgarh	2,35,40,196	2.354
19	Delhi	1,67,53,235	1.675
20	Jammu and Kashmir	1,22,67,013	1.227
21	Uttarakhand	1,11,16,752	1.112
22	Himachal Pradesh	68,56,509	0.686
23	Tripura	36,71,032	0.367
24	Meghalaya	29,64,007	0.296
25	Manipur	27,21,756	0.272
26	Nagaland	19,80,602	0.198
27	Goa	14,57,723	0.146
28	Arunachal Pradesh	13,82,611	0.138
29	Mizoram	10,91,014	0.109
30	Sikkim	6,07,688	0.061
31	Puducherry	12,44,464	0.124
32	Chandigarh	10,54,686	0.105
33	Dadra and Nagar Haveli and Daman and Diu	5,85,764	0.059
34	Andaman and Nicobar Islands	3,79,944	0.038
35	Ladakh	2,74,289	0.027
36	Lakshadweep	64,429	0.006
Total		1,24,63,79,776	124.638

THANK YOU

Agenda Item 1(ii): Confirmation of the Minutes of the 51st GST Council Meeting held on 02nd August, 2023

The 51st meeting of the GST Council was held on 2nd August, 2023 under the Chairpersonship of the Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman through Video Conference. 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 51st meeting of the GST Council:

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<u>Sl. No.</u>	<u>Agenda Item</u>	<u>Page No.</u>
1.	Deemed ratification of Notifications and Circulars by the GST Council and decisions of GST Implementation Committee for the information of the Council	7-16
2.	Proposal for making amendments to the CGST Act, 2017, IGST Act, 2017, CGST Rules, 2017 and issuance/amendment of notifications pertaining to casino, online gaming and horse racing	17-23
3.	Addendum to Agenda item 2: Revised Valuation Rules- Rule 31B and Rule 31C (As per deliberations in the Officer's Meeting held on 01/08/2023)	-

1.3 The Secretary to the GST Council, welcomed all the Hon'ble Members of the Council and participating officers to the 51st meeting of the GST Council.

1.4 The Secretary on behalf of the Council, welcomed Dr. Pramod Sawant, Hon'ble Chief Minister, Goa to his very first Council Meeting. The Secretary also welcomed Sh. Ajit Pawar, Hon'ble Deputy Chief Minister, Maharashtra and Sh. B. D. Kalla, Hon'ble Member from Rajasthan who were attending GST Council meeting after some time gap.

1.5 The Secretary appreciated the immense contribution made by Sh. Vivek Johri, ex-Chairman, CBIC to the Council who had superannuated on 31/07/2023.

1.6 The Secretary stated that the GST Council in its 50th meeting had made certain recommendations on taxation of casinos, race courses and online gaming and recommended levy of 28% GST on the face value. Many Hon'ble Members had requested to make corresponding amendments in various GST Acts and Rules at the earliest. The amendments have been drafted by the Law Committee and they form the main agenda for this Council meeting. The Secretary informed that the Law Committee had invited officers from Tamil Nadu during deliberation on the proposed amendments in the Acts and Rules, as desired in the 50th meeting of the Council.

1.7 He further informed the Council that the agenda for the 51st meeting of the GST Council was discussed in detail during the Officers' Meeting a day before and based on the suggestion made in the Officers' Meeting, the revised draft Rule 31 B and 31 C pertaining to valuation rules as detailed in Agenda Item No. 2 had been circulated and incorporated in today's presentation.

1.8 The Secretary stated that there were two agenda items for this meeting. The first agenda was regarding ratification of Notifications and Circulars by the GST Council and decisions of GST Implementation Committee for the information of the Council which were issued/taken between the two Council Meetings. The second agenda was the proposal for making amendments to the CGST Act, 2017, IGST Act, 2017, CGST Rules, 2017 and issuance/amendment of notifications pertaining to casinos, online gaming, and horse racing to carry forward the recommendations made by the Council in its 50th Meeting. After taking permission of the chair to begin deliberations on each agenda item, he asked the Pr. Commissioner, GST Policy to present both the agenda items before the Council.

2. Agenda item 1: Ratification of the Notifications and Circulars issued by the GST Council and decisions of GST Implementation Committee for the information of the Council

2.1 The Pr. Commissioner, GST Policy took up the first agenda pertaining to the ratification of the notifications and circulars issued by the GST Council and decisions of the GST Implementation Committee for the information of the Council (Page 07-16 of the agenda). He stated that this agenda was discussed in the Officers' Meeting held yesterday and all officers had recommended approval / ratification of the notifications and circular. He also added that subsequent to the circulation of the agenda, eight (8) more Central Tax Notifications No. 27/2023-Central Tax to 34/2023- Central Tax all dated 31.07.2023 and one (1) more Integrated Tax Notification No. 01/2023-Integrated Tax dated 31.07.2023 have been issued based on the recommendations of the Council made in 50th meeting. He requested the Council to ratify the notifications and circulars issued based on the recommendations by the GST Council and take note of the decisions of the GST Implementation Committee (GIC).

Decision: The Council ratified the notifications and circulars issued based on the recommendations by the GST Council and took note of the decisions of GST Implementation Committee.

3. Agenda Item 2 :- Proposal for making amendments to the CGST Act, 2017, IGST Act, 2017, CGST Rules, 2017 and issuance/amendment of the Notifications pertaining to the Casino, Online gaming and Horse Racing

3.1 The Pr. Commissioner, GST Policy took up the next agenda regarding amendments in CGST Act, IGST Act, CGST Rules, and issuance of notifications pertaining to taxability of online gaming, casinos, etc. He made the detailed presentation (attached as **Annexure-3**) on the recommendations made by the Law Committee and the discussion made in the Officers' meeting on the said agenda. He stated that the Revenue Secretary had already mentioned that the actionable claims supplied in casinos, online gaming, and horse racing were agreed to be made taxable at 28% on full face value irrespective of whether activities are games of chance or game of skill in 50th GST Council Meeting. He stated that the matter was discussed in the two meeting of the Law Committee held on 21st July and 27th July, 2023 and various amendments in CGST/IGST Acts were deliberated. Thereafter, the Law Committee made certain recommendations regarding amendments in the CGST Act 2017, IGST Act 2017 and CGST Rules 2017 as well as issuance/ modification of notification.

Amendment in CGST Act, 2017 and IGST Act, 2017

3.2 The Pr. Commissioner, GST Policy stated that Entry 6 of Schedule III of the CGST Act 2017 is proposed to be amended to exclude “specified actionable claims” from the said Entry to provide clarity regarding taxability of actionable claims involved in Casino, Horse racing and Online game.

3.3 Further, clause (102A) was proposed to be inserted in Section 2 of CGST Act to define “specified actionable claim” so as to mean actionable claim involved in or by way of (i) betting; or (ii) casinos; or (iii) gambling; or (iv) horse racing; or (v) lottery; or (vi) online money gaming. The clause (80A) was proposed to be inserted in Section 2 of the CGST Act for defining “online gaming”. The clause (117A) was also proposed to be inserted in Section 2 of the CGST Act for defining “virtual digital assets” as having the same meaning as assigned to it in section 2(47A) of Income Tax Act, 1961.

3.4 The Pr. Commissioner, GSTPW, then referred to the insertion of clause (80B) in Section 2 of the CGST Act for defining “online money gaming” which is as under:

"online money gaming " means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any law for the time being in force.

3.5 A proviso was also proposed to be inserted in clause (105) of Section 2 of the CGST Act which defines “supplier”. The Pr. Commissioner, GST policy stated that the said proviso is proposed to be inserted to provide clarity to identify the supplier in case of specified actionable claims.

3.6 The Pr. Commissioner, GST Policy took up the amendment regarding the taxability of cross-border supplies of online money gaming by a supplier located outside India to a person in India. The proviso to Section 5 of IGST Act is proposed to be amended so that the integrated tax on goods, *other than goods as may be notified by the Government on the recommendations of the Council*, imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962.

3.7 A new Section 14A is proposed to be inserted in IGST Act to provide for special provision for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India, *inter-alia* to specify liability on the said supplier for payment of integrated tax on such supply. Section 14A also provides the provision of a single registration of the said supplier through the Simplified Registration Scheme and the power to the Government for blocking of access by the public in case of failure to comply with the provisions. He, thereafter, stated that besides these amendments, there are some other amendments that are proposed in CGST Act and IGST Act which are detailed in the agenda and were discussed in detail in officers’ meeting and were agreed to. He stated that some consequential amendments would be required in registration and return related provisions in CGST Rules with reference to the suppliers covered under the proposed section 14A of IGST Act.

Issuance of notification under section 15(5) of CGST Act 2017

3.8 The Pr. Commissioner, GST Policy mentioned that Section 15 (5) of CGST Act, 2017 provides that notwithstanding anything contained in section 15 (1) and 15 (4) of CGST Act, 2017, 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.

3.9 Law Committee recommended to notify supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos under section 15 (5) of CGST Act 2017 for prescribing the manner of determination of the value of these supplies through CGST Rules, 2017. The draft notification recommended by the Law Committee had been attached in the agenda.

Amendment in CGST Rules, 2017 for prescribing value of supplies of online gaming and actionable claims in casinos

3.10 The Pr. Commissioner, GST Policy then took up the issue of amendment in CGST Rules, 2017 for prescribing the value of supplies of online gaming and actionable claims in casinos. The same was deliberated in the Law Committee and thereafter recommendations were made. The Law Committee recommended insertion of Rule 31B and Rule 31C in CGST Rules for prescribing the manner of determination of value of supplies in case of online gaming and value of supply of actionable claims in case of casino. He stated that the matter was deliberated in officers meeting held the previous day and various States made some recommendations. After taking into consideration the recommendations made by various States, a revised formulation of the said rules was made and circulated. He stated that in the agenda, which was circulated earlier, the words 'or payable' after the words 'total amount paid' are proposed to be inserted in Rule 31B and 31C of CGST Rules as per the discussion in Officers' meeting.

3.11 Pr. Commissioner, GST Policy stated that one of the concerns was that the money could directly be used in the slot machines instead of tokens or coins to address which it was proposed to add a sub-clause (ii) in Rule 31C in the definition to provide that value of supply shall be the total amount paid or payable by or on behalf of the player for participating in any event, including game, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.

3.12 Further, he also stated that, it is proposed to add an Explanation to Rule 31B and Rule 31C to state that any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is further used for playing by the said player in an event without withdrawing, shall not be considered as the amount paid or deposited with the supplier by or on behalf of the said player. This recommendation was agreed upon in the officer's meeting.

3.13 He further mentioned that in the Officers' meeting, Sikkim, Goa and Karnataka had raised the issue of treatment of refund/ return of the money to the players on account of unused chips or tokens in the case of casinos and unused wallet amounts in the case of online gaming. It was suggested to clarify the issue so as to remove any ambiguity that the tax once paid cannot be refunded or netted.

3.14 The Pr. Commissioner, GST Policy proposed a formulation in relation to treatment of refund or return of money to the players. He stated that the proposal was to insert a proviso in proposed Rule 31B to provide that any amount returned or refunded by the supplier to the player for any reason whatsoever, including the reason that the player has not used the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming. He stated that it is also proposed to insert a similar proviso in rule 31C to provide that any amount returned or refunded by the casino to the player on the return of token, coins, or tickets, as the case may be, or otherwise, shall not be deductible from the value of supply of actionable claims in casino.

Amendment in Notification No. 66/2017-Central Tax dated 15.11.2017 to exclude specified actionable claims:

3.15 The Pr. Commissioner, GST Policy, then took up the issue of amendment in Notification No. 66/2017-Central Tax dated 15.11.2017. The said notification was issued to exempt all registered persons from the requirement of payment of tax at the time of receipt of advances in case of supply of goods and provides for payment of tax in such cases at the time of supply as specified in Section 12(2)(a) of CGST Act. Law Committee recommended amendment in Notification No. 66/2017-Central Tax to exclude registered persons making supply of specified actionable claims as defined in proposed clause (102A) of section 2 of the CGST Act from the said exemption, so that in case of specified actionable claims, the tax can be paid at the time of receipt of payment for such supplies by the suppliers.

Suggestions made in the Officers meeting held on 01.08.2023 to be deliberated by the Law Committee: -

3.16 The Principal Commissioner, GSTPW mentioned that in Officers' meeting, Kerala had suggested that in the case of online gaming, recording of PIN code of the recipient by the supplier should be made mandatory to record the place of supply. This issue was discussed and it was recommended that whether pin code or State code would be sufficient for the determination of Place of Supply is a broader issue related to online supplies of various goods and services. This aspect should be decided in the case of all the online supplies of goods and services and Law Committee should examine it and then bring it before the Council. He further stated that the suggestion of Haryana to include "virtual digital assets" in the definition of "consideration" in section 2 (31) of the CGST Act 2017 was also discussed and it was noted that this is also a larger issue and requires separate examination by the Law Committee.

3.17 The Pr. Commissioner, GST Policy then took up the suggestion put forth by Gujarat wherein it was suggested that amendment may be made in section 17(5) of CGST Act for blocking of the ITC on account of tax paid by business entities for their employees in relation to online gaming or casinos. He stated that the issue was discussed in Officers' meeting and it was recommended that this issue can be separately examined by Law Committee, as this issue may not require amendment in law.

3.18 After the presentation of the Principal Commissioner, GSTPW, the Secretary opened the floor for suggestions/comments from the Members of the Council.

3.19 The Hon'ble Member from Tamil Nadu informed that some specified online games and online gambling are prohibited in the State of Tamil Nadu and therefore in view of the same, they have suggested for modifications in the amendment proposed by the Law Committee in Section 2 (102A) and Section 2 (80B) of the CGST Act. He also mentioned that a letter in this regard, has also been sent to the Hon'ble Chairperson for kind consideration.

3.20 The Secretary clarified that irrespective of the fact that whether an activity is legal/illegal or banned, it is liable to tax under GST Law. All activities like betting, casino, gambling, horse racing, lottery, online money gaming have therefore been included in the definition of 'specified actionable claim' treating such activity to be a supply and hence taxable under GST Act. Prohibition of any of these activities in any State and taxability of such activities under GST law are two separate issues and are covered under separate Acts. Taxing a banned/prohibited activity by no means legalises the said activity in a particular State where it is banned/prohibited. He further brought to the notice of the

Council that while drafting the proposal for amendments in the relevant sections of CGST Act, the ASG had also held the same view.

3.21 The Hon'ble Chief Minister of Goa requested the Council to reconsider the decision taken in 50th GST Council Meeting of taxing the casino sector at 28% on full face value of chips sold instead of Gross Gaming Revenue. He stated that the business model of casino and online gaming should not be treated at par. The decision of the Council would damage the economy of the State as casino sector significantly contributes to the employment and economy of Goa. He requested the Council to reconsider the decision of imposing tax on full face value of chips sold and support Govt. of Goa to maintain the method of taxing on Gross Gaming Revenue.

3.22 The representative of Goa stated that casino industry is limited to only two States i.e Sikkim and Goa and this decision would adversely affect the casino industry leading to its closure. Non-refund of tax on return of chips in casino sector will promote unethical practices in the casino industry and requested for re-consideration of this issue in GST Council meeting.

3.23 The Hon'ble Member from Kerala informed that he is in general agreement with the decision taken in 50th GST Council Meeting. However, he raised the issue of Place of Supply in case of online gaming and suggested that in case of online gaming, recording of PIN code of the recipient should be made mandatory. He therefore requested that specific provision for recording of PIN code be notified so that consuming State could get their due revenue.

3.24 The Secretary suggested that the issue of requirement of PIN code of the recipient and Place of Supply is a larger issue and not only related to online gaming but also to other online supplies as well. Therefore, it may be separately examined in detail by the Law Committee including all cases of online supply of goods and services. He also recommended that the Law Committee should come up with the formulation in the future GST Council Meeting.

The Council agreed to the issue of referring the matter to the Law Committee.

3.25 The Hon'ble Member from Sikkim seconded the views of the State of Goa. He further stated that Sikkim is a small landlocked State having population of only six lakh and major source of livelihood is through casino industry. He stated that high levy of 28% on the value of chips purchased would lead to closure of casino industry and render many people in the State jobless. He requested that as per international practice, GST should continue to be imposed on GGR. He also suggested that if government desires rate of GST on casino sector could be increased from 28% to 35 % but valuation should be done on the Gross Gaming Revenue. He therefore requested that the Council should reconsider the decision of imposition of levy of 28% on full face value of chips.

3.26 The Hon'ble Member from Delhi requested for reconsideration of decision on levying higher rate of 28% on online gaming. She mentioned that online gaming industry is a growing start-up; it is extremely diverse sector and all games may not involve gambling/betting. There is also casual gaming which is not comparable to casino, betting or horse racing. Online gaming sector has received substantial FDI and the decision to levy higher rate of 28% will have serious repercussions on the entire start-up ecosystem and employment provided by this sector. She requested that the proposed amendment in Section 2 (102A) to modify the definition of 'specified actionable claim' may not be carried out and if needed, the issue of online gaming may be either referred back to the GoM or a separate GoM be constituted specifically for 'Online Gaming'.

3.27 The Hon'ble Member from Rajasthan informed that Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were issued by the Union Ministry of

Electronics and Information Technology (MeitY) in which the detailed guidelines for online gaming have been prescribed and these rules were further amended vide amendment dated 06th April, 2023 to define the concept of permissible online game and permissible online real money game. Since these guidelines cover the concept of permitted online gaming, therefore, clubbing online gaming with betting and gambling under GST Law would be contrary to the spirit of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and even imposition of same 28% tax rate on online gaming does not separate online gaming from betting and gambling. Therefore, these should be kept in different categories. He requested that the recommendation of GST Council to levy tax on the full face value paid for casino, race course and online gaming should be examined in detail before taking final decision regarding the value of supply.

3.28 The Hon'ble Member from Bihar supported the proposal to levy higher tax rate on gambling as it would not only increase the revenue of the Centre and States but it also has social and moral connotations. The Hon'ble Member further requested the Members of the Council to bring the proposed amendment bill to implement recommendation of GST Council on casino, race course and online gaming as soon as possible. The Hon'ble Member from Bihar thanked the Chairperson for inclusion of settlement amount of States in PIB releases. Further, the Hon'ble Member from Bihar requested the Chairperson to help Bihar in determining the actual potential of GST collection in the State. He further suggested that institutions like NIPFP may help Bihar in determining the revenue potential of its market activities, business and trading transactions. The Hon'ble Member suggested to include some indicator in online gaming to identify actual location of player so that tax collection goes only to concerned State only.

3.29 The Hon'ble Chairperson thanked the Member from Bihar for his inputs and assured that in respect of revenue collection potential if there is any possible help that institute like NIPFP can provide to Bihar, then they will certainly provide the same.

3.30 The Hon'ble Member from Punjab stated that they agreed with the views of the Hon'ble Member from Delhi and suggested for constitution of new GoM or to send the issue to GoM once again for detailed examination. Further, he suggested that if players purchased chips on platforms provided by casino or online games and paid the GST on such purchased chips, then players should not get refund on amount not used for playing or purchases returned by players.

3.31 The Hon'ble Member from Chhattisgarh raised the issue regarding the PIN code in relation to determining place of supply and stated that the anyone can use wrong PIN code on online gaming platform and therefore IP address of the devices may be taken from the companies as IP address is easily traceable. He suggested the use of IP address for tracing the players in online gaming would be very useful for determining Place of Supply

3.32 Further, the Hon'ble Member from Chhattisgarh expressed his full agreement with the Hon'ble Member from Bihar and suggested not to reopen issues which were debated in detail. Subsequently, he sought clarification in respect of Agenda Item 2 with serial no. (iv) regarding definition of online gaming. He stated that there are many games which do not appear to be gambling at first and apparently seem to be harmless. In these games, the gamers introduce the options for players to make investments and buy coins or points, then these games should also be treated as gambling and the same may be taken for consideration. The Hon'ble Member from Chhattisgarh also suggested to have some provision for continuing Compensation Cess for two affected States if they suffer fall in their revenue. He reiterated to stick to the decision of the GST Council and implement the rules accordingly.

3.33 The Revenue Secretary thanked the Hon'ble Member from Chhattisgarh and clarified that his suggestions on online games with stakes and games without stakes will be considered.

3.34 The Hon'ble Member from Meghalaya stated that he had two points to make. First point was regarding Rule 31B which states that the supply shall be total amount paid to or deposited with the supplier by way of money or money's worth. He informed that there are three scenarios in this online gaming taxation. The first scenario which prevailed before the bringing the proposal of taxation of casino, race course and online gaming in GST Council which means that 18% tax was being charged on platform fee on every transaction being played. The second scenario in which tax at the rate of 28% on full amount of each game would lead to large amount of taxation. In the third scenario, the tax rate of 28% is payable only when one buys the chips in casino. If the third scenario is implemented, it may not lead to much revenue growth.

3.35 The Revenue Secretary clarified that tax at the rate of 28% would be paid only once on transaction amount paid to online gaming operator. Suppose a person pays Rs.100 for a game then he has to pay 28% tax on this transaction. Earlier the online gaming operator was paying tax only on GGR/platform fee at 18% rate. Suppose that on playing a game of Rs.100, platform fee was 15% and online gaming operator paying tax at rate of 18% which was resulted in tax amount of only Rs.2.7. It was found that on an average, a person plays 3 times and therefore, for a game of Rs.100, average tax amount was collected by Government was only about Rs.8-10. However, now if they pay 28% on game of Rs.100 then GST of Rs.28 would be collected which is around 3 times more than tax collected earlier. Further, the Revenue Secretary added that if GST@ 28% is charged on each bet amount, then tax would be charged on each and every winning amount which would further increase the effective tax rate to above 28% and effective tax rate would become very high. It is also very difficult to tax on each bet in casinos and even in online gaming, accounts are liable to fudging. The Revenue Secretary stated that in the proposed framework it is expected that revenue would increase by 3 to 4 times, if volumes remain the same.

3.36 The Hon'ble Member from Haryana thanked the Hon'ble Chairperson for accepting one of their demands in the officers meeting on crypto assets. The Hon'ble Member expressed his concern on online gaming because Haryana is hub of IT industry. He further informed that online gaming has now become a sport in Commonwealth Games. He emphasized the need to relook into all aspects of online gaming including the future of gaming industry and not only regarding game of skill or game of chance. The Hon'ble member also expressed his concern over how foreign trading of crypto currency takes place where evasion of tax happens. He also informed that tax can be levied up to 40% under GST Act. He further added that Council may look into how other countries are taxing these activities and suggested that we may increase the rate of tax but keep the valuation on GGR which will also take care of demand of Goa and Sikkim.

3.37 The Hon'ble Member from Puducherry stated that the UT of Puducherry proposed to ban online gaming and they are awaiting suggestions from Ministry of Home Affairs and MeitY for bringing legislation to ban online games. The Hon'ble Member also expressed his agreement with taxing of betting, gambling, casinos, online games at 28% on face value. Apart from that, in order to give a wider definition, the word "wagering" which means 'risk (a sum of money or valued items) against someone else on the basis of the outcome of an unpredictable event may be included in section 2(102A) of CGST Act, 2017.

3.38 The Hon'ble Member from Andhra Pradesh stated that the State of Andhra Pradesh reiterates its stand taken in the last GST council meeting. He stated that the issue of taxation on casino, race course and online gaming involves both taxation from the GST point of view and revenue from the

State point of view. The Member highlighted the issue regarding hill States, North-Eastern States with international borders, small States specifically Goa; that the economic activity of these States like Forest and Mining are constrained by environmental and infrastructural challenges. He further stated that the economy of Goa depends on tourism and Casinos. The Hon'ble Member suggested that as Goa accepted 28% rate of tax on Casinos, liberal and flexible view may be taken on the value on which tax will be levied in the interest of co-operative federalism and growth of the small States like Goa.

3.39 The Hon'ble Member from Karnataka supported the view taken by Chhattisgarh and Bihar. He further stated that it is not desirable to go back on well considered decision taken after a thorough discussion in a short span of time. He further stated that all the efforts should be made to harness the full potential of revenue without showing any differential consideration for activities like betting which are not socially desirable. The Hon'ble Member expressed agreement with CM of Meghalaya on taxing every iteration of betting in a game. He clarified on the question of double taxation involved with taxing such iterations and stated that each subsequent act of wagering is an independent activity and not a consequence of first act of wagering or betting and therefore is liable for taxation. He further opined that taxing only entry deposit and not the further iterations of the game could lead to missed taxation opportunities. He further informed that current tax of 18% on GGR, with average 3 iterations, resulted in tax of 6% only but new proposed rate of tax @ 28% on entry deposit, the tax might go up by 22%, which is still an improvement but ideally each iteration of a game should be taxed. He further urged to move swiftly on the decision taken by the Council and suggested to revisit it after six months based on gained experience and formulation of new laws to counter avoidance of taxes.

3.40 The Hon'ble Member from Meghalaya clarified that he was not advocating taxing every iteration or every transaction.

3.41 The Hon'ble Member from Uttar Pradesh stated that a decision was taken in the 50th GST Council meeting on the issue of casinos, race course and online gaming after long discussions and that he supported the proposed amendments. The Hon'ble Member emphasised that public perception should be taken into account during framing of laws & rules in matter of taxation. He further stated that States should strive to utilize its resources and promote tourism to augment revenue rather than basing the economy solely on Casino. The Hon'ble Member supported the proposal of Kerala on the subject of Place of Supply and expressed his agreement to the matter to the Law Committee.

3.42 The Hon'ble Member from West Bengal stated that the Council had taken the decision in its 50th meeting on the issue of Casinos, Race Course and Online Gaming after discussions and it should not be reopened. She expressed agreement with the Hon'ble Member from Uttar Pradesh that the issue had come to an end as the entire issues was discussed in last meeting of the Council held on 11th July, 2023 and the present matter of discussion was regarding changes in proposed Rules by the Law Committee. It is always open for the Council to re-visit it if anyone finds difficulties.

3.43 The Secretary added that as most of members agreed to the proposal in the agenda, the amendment is required to be carried out in CGST Act by the Centre and in SGST Acts by the States and they have to be synchronised. He elicited the views of the Hon'ble Members in carrying out the requisite amendments in two months so that they can be made effective from 01.10.2023.

3.44 The Hon'ble Member from Delhi expressed her disagreement with the decision taken by the Council on the issue of Online Gaming. She also opined that the decision taken on Online Gaming will have wider impact on entire Start-up Sector. She urged that Online Gaming activities should not be conflated with gambling activities. She further added that the decision of the Council would enable

illegal betting and gambling sites which will operate from tax havens and will push Online Gaming sector from legal space into illegal space.

3.45 The Revenue Secretary clarified that the amendment presented in the Council pertains to the domain of Online Gaming exclusively where stakes are involved and not to the entire online gaming industry. It is important to note that the proposed definition merely states that instances involving monetary consideration or stake on an outcome that one expects, will be treated as an actionable claim and thus subject to taxation. He apprised the esteemed Members that the focal point of the discussion does not concern tax rates as the Council has already made decisions on tax rates for Online Gaming, Casinos and related areas during its 50th Meeting.

3.46 Regarding the concern raised by the Hon'ble Member from Delhi concerning illegal and offshore Online Gaming Platforms, the Secretary clarified that after thorough deliberation, Law Committee has recommended an amendment to the Act. This amendment seeks to introduce a specific provision mandating the appointment of a local representative for any entity located outside India. Additionally, the Secretary informed the Council that non-compliant entities would be blocked.

3.47 The Secretary requested to implement the decision that was already taken in the previous meeting. Furthermore, the Secretary proposed the recommendation for amendments and their impact on the Online Gaming Industry or Casinos could be re-evaluated by the Council after a period of say 6-8 months. This approach would allow for a timely implementation of the decision while also providing an opportunity to assess any adverse effects on the concerned Sectors in due course, if any.

3.48 On the request of the Secretary, the Member (Compliance), CBIC apprised the Council about the offshore Online Gaming Companies. He stated that the matter regarding these Companies was investigated by the Director General of GST Intelligence and the Companies which were not compliant with the GST laws, were referred to the MEITY for blocking. He apprised the Council that an order for blocking these Companies has been passed by the MEITY which was now being implemented by the DoT.

3.49 The Hon'ble Member from Delhi stated that she did not doubt the intent of the Council but was concerned about the IT abilities of these illegal Companies. She pointed out that the time taken by the Government procedure and formalities to pass an order for blocking these Companies resulted in creation of a number of mirror websites by these setups. She stated that if the recommendation to include online money gaming as an actionable claim is to be implemented, then the Council must be cognizant of the fact that it would promote illegal gambling. She emphasized that such a move would not only impact the Online Gaming Industry but also the entire Start-up ecosystem.

3.50 She highlighted that there was still a juncture to address this concern and once the Council passed the legislation, any future change would become very difficult.

3.51 The Chairperson responded to the concerns raised by the Hon'ble Member from Delhi and assured that all the points brought forward had been under deliberation since the beginning and were considered comprehensively. The final decision taken in the last meeting was a collective wisdom of Council involving all the members including Delhi who carefully weighed each and every point.

3.52 She brought out that the stakeholders referred by the Hon'ble Member from Delhi had been given ample opportunities to engage with the Council. These stakeholders had met with the Council separately, as a group, and as representatives in the Group of Ministers (GoM) specifically formed to address this issue, over a period of three years. The Chairperson emphasized that the Council was fully conscious of the significance of the nascent start-up ecosystem, particularly within the growing online

gaming industry. She made it clear that the Council was determined to ensure that the decision taken would not have any adverse impact on this area of growth. Throughout the past years, the Council had diligently worked on this matter and took into account various factors including investments, the start-up industry and their potential spillover effects on the investment environment in the country. These considerations were thoroughly weighed while arriving at the decision in the last meeting. The Chairperson asserted that the Council has duly considered the impact of this decision on investments in this sector as well.

Furthermore, she assured the Members that the officers could share the representations received from various gaming industry stakeholders, investors, and other concerned parties. The Chairperson made it clear that the Council was not devoid or unaware of the inputs from the gaming industry; rather, there had been multiple meetings with the industry over the years to address their concerns. The Chairperson reiterated that the issues at hand had been subject to extensive deliberations and re-deliberations over the past three years. The Council was committed to making an informed and thoughtful decision that considered all perspectives and potential consequences.

3.53 The Hon'ble Member from Meghalaya concurred with the Chairperson acknowledging that every point has been thoroughly deliberated over the course of several years. He reiterated that the decision in question had been reached by consensus during the 50th Meeting of the GST Council. He clarified that the purpose of the current discussion was not to alter the decision taken in the last meeting but rather to progress in determining the full-face value of the supply to be taxed.

3.54 The representative of Goa expressed that he has consistently supported the 28% tax rate as decided by the Council for the Casinos. His concern lies primarily in the methodology to be implemented in the law for its execution. He drew attention to the proposed amendments for online gaming, which he believed bring the relief intended.

He emphasized that the Casino Industry is confined only to the States of Goa and Sikkim. While he clarified that he did not endorse Casinos, he was worried about the economic repercussions on these States as a substantial portion of their revenue depends on the Casino Industry. He pointed out that the concept of 'full face value' remains ambiguous, especially considering that certain activities in Casinos also involve direct payments from credit card, etc. without the need for purchase of chips.

He recommended that the Law Committee together with State of Goa and Sikkim, collaboratively devise rules that align with a system not detrimental to the Casino Industry. He noted that the Ministry of Electronics and Information Technology (MeitY) is working on framing Rules for self-regulatory bodies for Online Gaming and Casinos indicating that the Council has the competence to establish differential rules for defining 'full face value' for the Casinos.

He expressed gratitude towards the Chairperson for previously referring the matter back to the Group of Ministers (GoM) for reconsideration. He suggested that the taxation should be aligned with the tax charged in the pre-GST era. He also opined that taxing on the basis of Gross Gaming Revenue (GGR) would have been a wise decision, benefiting all industries and the government. He concluded by disagreeing with the decision taken by the GST Council as he firmly believe it would adversely impact State of Goa and the Casino Industry.

3.55 The Hon'ble Member from Nagaland acknowledged the extensive discussions that took place during the meeting, wherein diverse perspectives were expressed by various States. He reminded the Council of the decision made in the previous meeting, where a consensus was almost reached to tax Casinos at 18%. However, this decision was later finalized at a 28% tax rate based on the inputs provided by the State of Uttar Pradesh. The reasoning behind this decision was to avoid any negative

public perception and criticism for promoting gambling as a lower tax rate might not be socially acceptable considering the moral values and revenue implications. He emphasized that the Council had resolved to implement the decision for a period of six months and would reassess if it would be necessary. He advocated closing the matter. In consideration of the affected States, Goa and Sikkim, he proposed referring the matter to the Group of Ministers (GoM) for examination and resolution or providing compensatory measures to address the specific challenges faced by these States in case of Casinos.

3.56 The Hon'ble Member from West Bengal asserted her stance on the matter, firmly stating that the issue has been thoroughly discussed in the current meeting and the 50th Council meeting. She mentioned that the Law Committee had also presented its report and it was imperative to implement it at present. However, she stated that if any adverse consequences arose due to the implementation, the matter could be brought back to the table for further review.

3.57 The CST, Maharashtra sought permission to speak on behalf of the Hon'ble Member from Maharashtra as he was preoccupied in unscheduled and unavoidable work during ongoing Assembly session. The CST presented his views and stated that the decision was taken in the 50th meeting of the Council to charge 28% tax on full face value and the State of Maharashtra was in agreement to all the amendments proposed in the Council agenda. He further stated that this issue has been longstanding for last almost 2.5 years due to which the revenue of the governments was also getting affected thus, the issue should be implemented steadfast, which could be reviewed again in the Council meeting if any need arose.

3.58 The Hon'ble Member from Gujarat urged the Council to move forward with the proposed amendments without delay, considering the prolonged deliberations and the urgency to address the revenue concerns.

3.59 The Hon'ble Member from Chhattisgarh appealed to Goa that decisions taken with the greater wisdom of the Council were certainly in the interest of all the States in the long run. He then apprised the Council about the forthcoming elections in his State in November and the enforcement of Code of Conduct from October, thus, they would bring the ordinance before 01.10.2023.

3.60 The Hon'ble Member from Himachal Pradesh stated they desired early implementation of the decision taken in the 50th meeting and endorsed the amendments proposed. He also ensured that the State would bring the enactments within the two months so that the State could take the benefit from the decision on an early date.

3.61 The Hon'ble Member from Haryana sought clarification on whether the commission or platform fee charged by companies would be subject to taxation again considering the tax being imposed on the face value at 28%.

3.62 In response, the Secretary clarified that such double taxation would not be applicable. There would be no need to tax the commission or platform fee separately. The Secretary also mentioned the possibility of issuing a formal clarification to address this matter definitively.

3.63 The Hon'ble Member from Delhi sought clarification on the taxation of TDS (Tax Deducted at Source) on the winnings in the gaming sector. She expressed concern that a player would end up paying both 28% GST and 30% TDS on their winnings.

3.64 The Secretary explained that winnings are subject to income tax and a clarification has already been issued regarding it and the industry is satisfied with it. He mentioned that the income tax is charged

on the net winnings of an individual for the year. The Secretary clarified that TDS is applicable only when there are winnings and if there are no winnings, there would not be any TDS deduction.

3.65 The Chairperson clarified that TDS is a component of direct taxation. The Chairperson clarified that matter of direct taxation does not fall under the purview of the GST Council.

3.66 The Member from Delhi acknowledged the clarification but suggested that the Council should consider revising the tax rate to provide some relief, as it would add to the overall taxation burden on the gaming industry.

3.67 The Secretary clarified to the Council that the current agenda of meeting solely pertained to the implementation of decisions taken in the 50th Council meeting. The proposed amendments in CGST Act and IGST Act were only meant to provide enabling provisions so that online money gaming like gambling continues to be subject to taxation. He emphasized that these amendments did not concern tax rates or the valuation of supply, which would require going through the legislative process. The valuation methods and tax rates are provided in the Rules and notifications, which can be amended by the Council at any time if any adverse impacts arise.

The Secretary further informed the Council about a Special Leave Petition filed against the judgment of the Hon'ble High Court of Karnataka in the case of M/s Gameskraft wherein it is being contested that these online gaming has an element of gambling/betting and must be taxable. The Council is making it clear that online money gaming, casinos, or horse racing are taxable irrespective of the presence of elements of betting or gambling through the decision taken in the 50th meeting.

3.68 While noting that all of States are in agreement, he acknowledged the differing viewpoints of Goa, Sikkim, Delhi and Punjab. Nonetheless, he urged the Council to proceed with implementation highlighting the possibility of revisiting the decision should the need arise. The Secretary informed the Council that similar apprehensions were made when 28% tax was proposed to be charged in case of lottery and it was feared that time also that the industry would be wiped out but that is not the case now. He acknowledged all the fears and apprehensions stated by the State of Goa and Sikkim. He assured them the Council has always worked for the betterment and development of each State. The Secretary appealed for unanimous approval of the decision, pointing out that a review would take place after six months of implementation. A comprehensive status report, encompassing revenue data and stakeholders' feedback, would be assessed during this review period, allowing the Council to make informed decisions while moving forward.

3.69 The Hon'ble Member from Tamil Nadu expressed his concern that the apprehensions of State were not fully considered before taking a unanimous decision.

3.70 The Chairperson responded to assure the Member that the concerns of Tamil Nadu were indeed taken into account. She pointed out the specific concern raised by Tamil Nadu about the possible anomaly between the decision regarding online gaming taken in the 50th Council meeting and the ban on online gaming imposed by the State. The Chairperson stated that the Revenue Secretary had already clarified that the decision would not result in any anomaly. The advice from the Additional Solicitor General (ASG) was sought and it indicated that there would be no conflict.

3.71 To address apprehension of Tamil Nadu about the decision being perceived as legalizing online gaming in State of Tamil Nadu where it is banned, the Secretary proposed providing for a provision in the proposed amendments to clarify that the provisions of the amendments do not prejudice any other law and do not intend to legalize any activity that is banned under other laws. The draft of this proposed clarificatory provision could be shared with the State.

3.72 The Member from Tamil Nadu thanked the Council for considering their request and agreed to the proposal for the draft provision to be sent to them.

3.73 The Member from Kerala also raised a similar issue regarding the ban on such activities in their State and expressed satisfaction with the proposal given by the Secretary.

3.74 The Chairperson reiterated that the Council had consulted the ASG to ensure that the proposed amendments would not lead to the liberalization of such activities in States where these are banned. She also mentioned **that a clarificatory provision would be formulated and shared with the State of Tamil Nadu.**

3.75 The Hon'ble Representative of Goa put his dissent to the decision and requested not to call it unanimous decision. He reiterated his suggestion to work out a mechanism where the decision taken could align with the law in a way it did not affect the States and the Industry or to review the present decision taken in three months.

3.76 The Hon'ble Member from Delhi also requested to not call the decision 'unanimous' as they had strong reservations.

3.77 The Hon'ble Member from Sikkim agreed with the points raised by Goa and emphasized to maintain the federal structure of the country in any decision-making process.

3.78 The Secretary informed that all the States except the State of Goa, Sikkim, Delhi and Punjab were in agreement with the proposed amendments.

3.79 The Chairperson expressed her gratitude to all the Members for attending the meeting, which focused on implementing the decision taken during the 50th Council Meeting to amend the law accordingly. She acknowledged the importance of this issue for some States and respected their views. The present meeting was convened to facilitate the implementation of that decision and the inputs of all Members were taken into consideration for making any necessary adjustments to the proposed amendments. She also stated the inputs given by Kerala for which other States have also agreed.

She assured the Council that any decision not taken unanimously would be recorded with the name of the State expressing dissent. She also mentioned that a previous decision regarding lottery was similarly recorded when it was not unanimous. She emphasized the significance of the Council's decision-making process which is a constitutional body and cautioned against undermining it by repeatedly referring decisions back to the Group of Ministers or the Council itself for reconsideration, which come back again within a short span of time to take a decision already taken forward for implementation. The Chairperson reiterated that the Council respected every view presented by the Members and either clarified or agreed or responded to them. She highlighted that the Council had previously postponed decisions when necessary in the interest of States and this decision had taken three years to reach finality.

She reassured that a review could be conducted after six months of implementation, if needed. Responding to the suggestion from the Hon'ble Member from Goa to review it in three months, she clarified that such a timeline would be too short to get sufficient experience for drawing any definitive conclusion.

She then assured that after the six months of its implementation, the Council will table it and review the statistics and the wisdom of the Council will prevail. She sought the cooperation of the Members of GST Council to implement the proposed amendment from 01.10.2023.

Decision: The Council agreed to amendments in the CGST Act 2017, IGST Act 2017 and CGST Rules 2017 (along with modifications in proposed rules presented before the Council and detailed in the presentation) and issuance of notification under section 15(5) of CGST Act 2017 and amendment in Notification No. 66/2017-CT dated 15.11.2017.

A clarificatory provision would be formulated in consultation with State of Tamil Nadu to the effect that this amendment would not amount to legalizing online gaming, etc which had been banned in Tamil Nadu and included in the amendment bill.

NIPFP will be asked to support the state of Bihar in assessing the revenue potential in the state.

In the end, the Secretary thanked the Hon'ble Chairperson, the Hon'ble MoS (Finance), the Hon'ble Members and all the officers for attending the 51st GST Council Meeting.

Annexure-1

List of Hon'ble Members/Ministers from the State attending the 51st Meeting of the GST Council held on 02.08.2023

S. No.	Name of States	Name of Hon'ble Ministers/Member of GST Council	Designation
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	Arunachal Pradesh	Shri Chowna Mein	Hon'ble Deputy Chief Minister-cum-Finance Minister
5	Assam	Smt. Ajanta Neog	Finance Minister
6	Bihar	Shri Vijay Kumar Chaudhary	Minister for Commercial Tax
7	Chhattisgarh	Shri T.S.Singh Deo	Deputy Chief Minister
8	Delhi	Smt. Atishi Marlena	Finance Minister
9	Goa	Dr. Pramod Sawant	Chief Minister
10	Goa	Shri Mauvin Godinho	Minister for Industries, Transport, Panchayati Raj, Protocol and Legislative Affairs
11	Gujarat	Shri Kanubhai Desai	Minister for Finance
12	Haryana	Shri Dushyant Chautala	Deputy CM and Excise & Taxation Minister
13	Himachal Pradesh	Shri Harshwardhan Chauhan	Industries Minister
14	Jammu and Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Hon'ble Lieutenant Governor, UT of J&K

15	Karnataka	Shri Krishna Byre Gowda	Minister for Revenue Department
16	Kerala	Shri K. N. Balagopal	Finance Minister
17	Maharashtra	Shri Ajit Pawar	Deputy Chief Minister, Minister for Finance
18	Manipur	Dr. Sapam Ranjan Singh	Minister for Medical, Health & Family Welfare Department and Publicity & Information Department
19	Meghalaya	Shri Conrad K. Sangma	Chief Minister
20	Mizoram	Shri. Lalchamlia	Taxation Minister
21	Nagaland	Shri K.G Kenye	Minister for Power and Parliament Affairs
22	Odisha	Shri Bikram Keshari Arukha	Minister for Finance
23	Punjab	Shri Harpal Singh Cheema	Finance Minister
24	Puducherry	Shri K. Lakshminarayanan	Minister for Public Works
25	Rajasthan	Shri B.D.Kalla	Minister, Department of Education (Primary and Secondary Education), Department of Sanskrit Education, Department of Art, Literature, Culture and Archeology, Independent charge of the Department of Primary Education under Panchayati Raj
26	Sikkim	Shri B. S. Panth	Minister of Tourism & Civil Aviation/Commerce & Industries/Information & Public Relations/Printing and Stationery Department
27	Tamil Nadu	Shri Thangam Thennarasu	Minister for Finance and Human Resources Management
28	Telangana	Shri T. Harish Rao	Minister for Finance, Health, Medical & Family Welfare
29	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs

30	Uttarakhand	Shri Premchand Aggarwal	Minister of Finance, Urban Development, Housing, Legislative and Parliamentary Affairs, Reorganisation and Census
31	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Finance

Annexure-2

Attendance of officers from the Centre and the States/UTs attending the 51st Meeting of the GST Council held on 02.08.2023

<u>S.No.</u>	Name of State/CBIC/GSTC/GOI/GSTN/DoR/TRU/POLICY WING	Guest's Name	Designation
1	DoR	Shri Sanjay Malhotra	Revenue Secretary
2	CBIC	Shri Sanjay Kumar Agarwal	Member(Compliance Management)
3	CBIC	Shri Shashank Priya	Member (GST)
4	CBIC	Shri Vivek Ranjan	Member (Tax Policy)
5	CBIC	Shri Pankaj Kumar Singh	Additional Secretary (GST Council Secretariat)
6	GST POLICY WING	Shri Sanjay Mangal	Principal Commissioner
7	GSTN	Shri Manish Kumar Sinha	CEO
8	GSTN	Shri Dheeraj Rastogi	EVP
9	TRU	Ms. Limatula Yaden	Joint Secretary
10	GST Council Secretariat	Ms. Ashima Bansal	Joint Secretary
11	GST Council Secretariat	Ms. B.Sumidaa Devi	Joint Secretary
12	DoR	Dr. N Gandhi Kumar	Director (State Taxes)
13	GST POLICY WING	Shri Alok Kumar	Additional Commissioner

14	GST POLICY WING	Shri Raghavendra Pal Singh	Additional Commissioner
15	GST POLICY WING	Dr. Gurbaz Sandhu	Additional Commissioner
16	TRU	Shri Pramod Kumar	OSD Commissioner in-situ
17	TRU	Ms. Puneeta Bedi	OSD
18	TRU	Shri Satvik Dev	OSD
19	Government of India	Shri S.S. Nakul, IAS	PS to FM
20	Government of India	Shri Sonam Karma Z Lhasungpa	Additional PS to FM
21	Government of India	Shri Sernya Bhutia	1ST PA TO FM
22	Government of India	Shri Kumar Ravikant Singh	PS to MoS Finance
23	DoR	Shri Deepak Kapoor	OSD to Revenue Secretary
24	GST POLICY WING	Shri Amit Samdariya	Deputy Commissioner
25	GST POLICY WING	Ms. Neha Yadav	Deputy Commissioner
26	GST POLICY WING	Ms. Soumya	Deputy Commissioner
27	TRU	Ms. Anna Sosa Thomas	Technical Officer
28	CBIC	Shri Rushikesh Kodgi	Dy. Controller of Accounts
29	PIB	Dr. Pragya Paliwal Gaur	Additional Director General
30	PIB	Shri Kush Mohan Nahar	Media & Communication Officer

31	GST Council Secretariat	Shri Kshitendra Verma	Director
32	GST Council Secretariat	Shri S.S.Shardool	Director
33	GST Council Secretariat	Shri Joginder Singh Mor	Under Secretary
34	GST Council Secretariat	Ms. Reshma R. Kurup	Under Secretary
35	GST Council Secretariat	Ms. Priya Sethi	Superintendent
36	GST Council Secretariat	Shri Dharambir	Superintendent
37	GST Council Secretariat	Shri Irfan Zakir	Superintendent
38	GST Council Secretariat	Shri Naveen Kumar	Superintendent
39	GST Council Secretariat	Shri Sachin Goel	Superintendent
40	GST Council Secretariat	Ms. Ambika Rani	Superintendent
41	GST Council Secretariat	Shri Niranjan Kishore	Superintendent
42	GST Council Secretariat	Shri Rakesh Joshi	Superintendent
43	GST Council Secretariat	Shri Vijay Malik	Inspector
44	GST Council Secretariat	Shri Padam Singh	Inspector
45	GST Council Secretariat	Shri Ashwani Sharma	Inspector
46	GST Council Secretariat	Shri Rohit Sharma	Inspector
47	GST Council Secretariat	Shri Karan Arora	Inspector

48	GST Council Secretariat	Shri Tarun	Inspector
49	GST Council Secretariat	Shri Pankaj Dhaka	Tax Assistant
50	GST Council Secretariat	Shri Paresh Garg	Tax Assistant
51	GST Council Secretariat	Shri Shyam Bihari Meena	Tax Assistant
52	Andhra Pradesh	Shri N. Gulzar	Secretary Finance(CT)
53	Andhra Pradesh	Shri M. Girija Sankar	Chief Commissioner(ST)
54	Andhra Pradesh	Shri K. Ravi Sankar	Commissioner(ST) Policy
55	Arunachal Pradesh	Shri Lobsang Tsering	Commissioner (Tax & Excise)
56	Arunachal Pradesh	Shri Tapas Dutta	Deputy Commissioner-cum-SNO (GST)
57	Arunachal Pradesh	Shri Nakut Padung	ST (GST Cell)
58	Assam	Shri Samir K. Sinha	Principal Secretary, Finance
59	Assam	Shri Jayant Narlikar	Commissioner & Secretary. Finance
60	Assam	Shri Rakesh Agarwalla	Principal Commissioner of State Tax
61	Assam	Md. Shakeel Saadullah	Special Commissioner of State Tax
62	Bihar	Dr. Pratima	Commissioner cum Secretary Commercial Taxes
63	Bihar	Shri Sanjay Kumar Mawandia	Audit Expert Commercial Taxes
64	Bihar	Shri Krishna Kumar	Joint Secretary, Commercial Taxes

65	Bihar	Shri Binod Kumar Jha	Additional Commissioner State Tax
66	Chandigarh	Shri Vinay Pratap Singh	Deputy Commissioner-cum-Excise and Taxation Commissioner
67	Chandigarh	Shri Alok Passi	Assistant Excise and Taxation Commissioner
68	Chhattisgarh	Shri Himshikhar Gupta	Secretary, Commercial Tax (State Tax)
69	Chhattisgarh	Shri Ritesh Kumar Agrawal	Commissioner of State Tax
70	Delhi	Shri A Anbarasu	Principal Commissioner (State Tax)
71	Delhi	Shri Awanish Kumar	Special Commissioner (State Tax)
72	Delhi	Shri Lekh Raj	Additional Commissioner (State Tax)
73	Delhi	Shri Atish Kumar	Joint Commissioner (State Tax)
74	Goa	Shri S.S.Gill	Commissioner of State Tax
75	Goa	Shri Vishant S.N.Gaunekar	Additional Commissioner of State Tax
76	Goa	Shri.Chandresh C.Kunkalkar	Additional Commissioner of State Tax
77	Gujarat	Shri J.P. Gupta	Additional Chief Secretary, Finance Department
78	Gujarat	Ms. Arti Kanwar	Secretary (Economic Affairs), Finance Department
79	Gujarat	Shri Samir Vakil	Chief Commissioner of State Tax (I/c)
80	Gujarat	Shri Dilip Thaker	Joint Secretary (Tax)

81	Gujarat	Shri Riddhesh Raval	Joint Commissioner of State Tax
82	Haryana	Shri Devinder Singh Kalyan	Principal Secretary to Government Haryana, Excise and Taxation Department.
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 (ST&E)
86	Himachal Pradesh	Shri Yunus	Commissioner State Taxes and Excise
87	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner State Taxes and Excise
88	Jammu and Kashmir	Shri Santosh D. Vaidya	Principal Secretary, Finance Department
89	Jammu and Kashmir	Dr. Rashmi Singh	Commissioner, State Taxes
90	Jharkhand	Ms. Vipra Bhal	Secretary, Commercial Taxes
91	Jharkhand	Shri Santosh Kumar Vatsa	Commissioner, Commercial Taxes
92	Jharkhand	Shri Brajesh Kumar	Assistant Commissioner of State Taxes
93	Karnataka	Ms. C. Shikha	Commissioner Commercial Tax
94	Karnataka	Dr. Ravi Prasad	Additional Commissioner CT
95	Kerala	Shri Ajit Patil	Commissioner, State GST Department
96	Kerala	Shri Abraham Renn S	Additional Commissioner-1

97	Madhya Pradesh	Smt. Deepali Rastogi	Principal Secretary, Commercial Tax Department
98	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner, Commercial Tax
99	Madhya Pradesh	Shri Manoj Kumar Choubey	Additional Commissioner, Commercial Tax
100	Madhya Pradesh	Shri Harish Jain	Commercial Tax Officer
101	Maharashtra	Shri Nitin Kareer	Additional Chief Secretary (Finance)
102	Maharashtra	Ms Shaila A	Principal Secretary (Financial Reforms)
103	Maharashtra	Shri Rajeev Mital	Commissioner of State Tax
104	Maharashtra	Shri Kiran Nandedkar	Joint Commissioner, HQ-5
105	Maharashtra	Shri Manoj Kumar Narayanwal	Deputy Commissioner
106	Maharashtra	Shri Babasaheb Gore	OSD
107	Manipur	Ms. Mercina R. Panmei	Commissioner of Taxes
108	Manipur	Shri Y. Indrakumar Singh	Assistant Commissioner of Taxes
109	Meghalaya	Shri Ramakrishna Chitturi	Commissioner of Taxes
110	Meghalaya	Shri L Khongsit	Additional Commissioner of Taxes
111	Meghalaya	Shri V R Challam	Deputy Commissioner of Taxes
112	Meghalaya	Shri. P.S. Lyngdoh	Assistant Commissioner of Taxes
113	Mizoram	Shri Vanlal Chhuanga	Principal Secretary, Taxation Department

114	Mizoram	Shri H. Lianzela	Secretary, Taxation Department
115	Mizoram	Shri R. Zosiamliana	Commissioner of State Tax
116	Mizoram	Shri . C. Vanlalchhuana	Commissioner of State Tax
117	Mizoram	Shri Hrangthanmawia	Assistant Commissioner of State Taxes
118	Mizoram	Shri. K.H. Thanchhunga	State Tax Officer
119	Mizoram	Smt. Jennifer Lallawmpuii Pachau	State Tax Officer
120	Nagaland	Shri Wochamo Odyuo	Additional Commissioner of State Taxes
121	Odisha	Shri Vishal Kumar Dev	Principal Secretary, Finance
122	Odisha	Shri Sanjay Kumar Singh	Commissioner of Commercial Taxes & GST
123	Punjab	Shri Vikas Partap	Financial Commissioner (Taxation)
124	Punjab	Shri Kamal Kishor Yadav	Commissioner of State Tax
125	Punjab	Shri Ravneet Khurana	Additional Commissioner of State Taxes (Audit)
126	Puducherry	Shri L. Mohamed Mansoor	Commissioner of State Tax
127	Rajasthan	Dr Ravi Kumar Surpur	Chief Commissioner, State Tax
128	Rajasthan	Shri Mahesh Kumar Gowla	Special Commissioner (GST), State Tax
129	Rajasthan	Shri Arvind Mishra	Advisor, State Tax
130	Sikkim	Shri Manoj Rai	Commissioner (Commercial Taxes)

131	Tamil Nadu	Shri T.Udhayachandran	Principal Secretary, Finance
132	Tamil Nadu	Shri Dheeraj Kumar	Principal Secretary/Commissioner of Commercial Taxes
133	Tamil Nadu	Ms. B. Jothi Nirmalasamy	Secretary, Commercial Taxes and Registration
134	Telangana	Smt. Santhi Kumari	Chief Secretary and Special Chief Secretary (CT & Excise)
135	Telangana	Shri K Ramakrishna Rao	Special Chief Secretary Finance
136	Telangana	Shri N Sai Kishore	Additional Commissioner State Tax
137	Telangana	Ms. K Rupa Sowmya	Deputy Commissioner State Tax
138	Tripura	Ms. Rakhi Biswas	Chief Commissioner of State Tax
139	Tripura	Shri Ashin Barman	GST Nodal Officer
140	Uttarakhand	Dr. Ahmad Iqbal	Commissioner of State Tax
141	Uttarakhand	Shri Anil Singh	Additional Commissioner
142	Uttarakhand	Shri Amit Gupta	Additional Commissioner
143	Uttarakhand	Shri Anurag Mishra	Joint Commissioner
144	Uttarakhand	Shrji Ranjit Singh	Assistant Commissioner
145	Uttar Pradesh	Shri Nitin Ramesh Gokarn	Additional Chief Secretary, State Tax
146	Uttar Pradesh	Ms. Ministhy S	Commissioner, State Tax

147	Uttar Pradesh	Shri Harilal Prajapati	Joint Commissioner(GST)
148	Uttar Pradesh	Shri Paritosh Kumar Mishra	Deputy Commissioner, State Tax
149	Uttar Pradesh	Shri Amit Pandey	PA to Honourable Minister
150	West Bengal	Dr. Manoj Pant	Additional Chief Secretary, Finance Department
151	West Bengal	Shri Khalid Aizaz Anwar	Commissioner of State Tax
152	West Bengal	Shri Rajib Sankar Sengupta	Senior Joint Commissioner of Revenue
153	West Bengal	Shri Joyjit Banik	Senior Joint Commissioner of Revenue

Annexure-3



Ratification of Notifications and Circulars

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

[Vol 1- Pg. 7-16]

Act/Rules	Notifications/Circulars Nos.	Description/Remarks
CGST Act/ CGST Rules	Nine (09) Central Tax Notifications issued (No. 18/2023 to 26/2023) & Five (05) Central Tax (rate) Notifications issued (No. 06/2023 to 10/2023). Subsequent to circulation of Council agenda, Eight (8) more Central Tax Notifications issued (No. 27/2023 to 34/2023 all dated 31.03.2023)	Notifications have been issued to implement various decisions of GST Council taken in 50 th meeting. Some of the important notifications are: i. Extension of time limit for application for revocation of cancellation of registration. ii. Extension of Amnesty scheme for deemed withdrawal of assessment orders issued under Section 62. iii. Extension of Amnesty to GSTR-4, GSTR-9 and GSTR-10 non-filers. iv. Extension of due dates for furnishing FORM GSTR-1, FORM GSTR-3B and FORM GSTR-7 for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur. v. Extension of due dates for furnishing FORM GSTR-3B for quarter ending June, 2023 for registered persons whose principal place of business is in the State of Manipur.
UTGST Act	Five (05) Union Territory Tax (rate) Notifications issued (No. 06/2023 to 10/2023)	Notifications to implement various decisions of GST Council taken in 50 th meeting
IGST Act	Five (05) Integrated Tax (rate) Notifications issued (No. 06/2023 to 10/2023). Subsequent to circulation of Council agenda, One (1) more Integrated Tax Notification issued (No. 01/2023 dated 31.03.2023)	Notifications to implement various decisions of GST Council taken in its 50 th meeting

Agenda 1: Ratification of Notifications and Circulars (2/2)

[Vol 1- Pg. 7-16]

Act/Rules	Notifications/Circulars Nos.	Description/Remarks
Goods and Services Tax (Compensation to States) Act, 2017	One (01) Compensation Cess (rate) Notification issued (No. 03/2023)	Notifications to implement various decisions of GST Council taken in its 50 th meeting
Circulars	Eight (08) Circulars issued (No. 192/04/2023 to 199/11/2023 dated 17.07.2023)	Circulars have been issued to implement various decisions of GST Council taken in 50 th meeting. These circulars are: i. 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 ii. 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 iii. Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction iv. Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period v. Clarification on taxability of share capital held in subsidiary company by the parent company vi. Clarification on refund-related issues vii. Clarification on issue pertaining to e-invoicing viii. 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

Recommendations of the Law Committee

Agenda 2: Amendments in CGST Act 2017, IGST Act 2017 & CGST Rules and amendment/ issuance of notifications for online gaming/ casinos, etc.
(1/8) [Vol 1- Pg 17-23]

Issue:

- ❖ The GST Council, in the 50th meeting held on 11.07.2023, deliberated on the Agenda Item No. 5 i.e. Second Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming.
- ❖ The Council recommended that the **actionable claims supplied in Casinos, Horse racing and Online gaming** to be taxed at the rate of 28% **on full face value** irrespective of whether the activities are a game of skill or chance and accordingly, **the law may be amended to provide clarity on the matter.**
- ❖ Accordingly, a proposal for amendments in the CGST/IGST Acts was deliberated by the Law Committee in its meeting held on 21.07.2023 and 27.07.2023.
- ❖ The Law Committee recommended certain amendments in CGST Act 2017, IGST Act 2017 and CGST Rules 2017 as well as issuance of notifications/ amendment in notification.

Agenda 2: Amendments in CGST Act 2017, IGST Act 2017 & CGST Rules and amendment/ issuance of notifications for online gaming/ casinos, etc.
(2/8) [Vol 1- Pg 17-23]

Major Amendments in CGST Act/ IGST Act

1. Amendment in Entry 6 of Schedule III of CGST Act to clarify taxability of actionable claims in casinos, horse racing and online gaming and insertion of related definitions:

S.No.	Section of CGST Act	Description
1.	Entry 6, Schedule III	Entry 6 of Schedule III of CGST Act to be amended to exclude “specified actionable claims” from the said Entry , so as to provide clarity regarding taxability of actionable claims involved in or by way of casinos, horse racing and online gaming.
2.	Section 2(102A)	Insertion of clause (102A) in section 2 for defining “ specified actionable claim ”, so as to mean actionable claims involved in or by way of betting, gambling, lottery, casinos, horse racing or online money gaming.

Agenda 2: Amendments in CGST Act 2017, IGST Act 2017 & CGST Rules and amendment/ issuance of notifications for online gaming/ casinos, etc.
(3/8) [Vol 1- Pg 17-23]

Major Amendments in CGST Act/ IGST Act

1. Amendment in Entry 6 of Schedule III of CGST Act to clarify taxability of actionable claims in casinos, horse racing and online gaming and insertion of related definitions (Contd.):

S.No.	Section of CGST Act	Description
3.	Section 2(80B)	Insertion of clause (80B) in section 2 of CGST Act for defining “online money gaming” so as to mean online gaming in which players pay or deposit money or money’s worth in expectation of winning money or money’s worth in any event, including game, scheme, competition or any other activity or process, irrespective of chance or skill, and irrespective of whether permissible by Law or not.
4.	Section 2(80A)	Insertion of clause (80A) in section 2 of CGST Act for defining “online gaming” so as to mean offering of a game on the internet or an electronic network and including online money gaming

Agenda 2: Amendments in CGST Act 2017, IGST Act 2017 & CGST Rules and amendment/ issuance of notifications for online gaming/ casinos, etc.
(4/8) [Vol 1- Pg 17-23]

Major Amendments in CGST Act/ IGST Act

2. Deeming provision in the definition of supplier for treating a person as supplier in respect of a supply of specified actionable claims:

S.No.	Section of CGST Act	Description
5.	Section 2(105)	Insertion of a proviso in clause (105) of section 2 of CGST Act to provide for a deeming provision in the definition of “supplier” to treat a person as supplier in respect of a supply of specified actionable claims.

Agenda 2: Amendments in CGST Act 2017, IGST Act 2017 & CGST Rules and amendment/ issuance of notifications for online gaming/ casinos, etc. (5/8) [Vol 1- Pg 17-23]

Major Amendments in CGST Act/ IGST Act

3. Providing for taxability of cross-border supplies of online money gaming by a supplier located outside India to a person in India

S.No.	Section of IGST Act	Description
6.	Section 14A	A new section 14A to be inserted in IGST Act to provide for special provision for supply of online money gaming by a person located outside the taxable territory to a person in India, <i>inter alia</i> to provide for: <ul style="list-style-type: none">▪ Liability on the said supplier for paying integrated tax on such supply▪ Single registration of the said supplier through Simplified Registration Scheme.▪ Blocking of access by the public in case of failure to comply with the provisions.

- Besides, there are some other amendments proposed in CGST Act and IGST Act to provide for other consequential changes.
- Consequential amendment in CGST Rules related to registration and returns will also be required in respect of proposed section 14A of IGST Act.

Agenda 2: Amendments in CGST Act 2017, IGST Act 2017 & CGST Rules and amendment/ issuance of notifications for online gaming/ casinos, etc. (6/8) [Vol 1- Pg 17-23]

Valuation of supply of online gaming and actionable claims in casinos

▪ **Amendment in CGST Rules, 2017 for prescribing value of supplies of online gaming and actionable claims in casinos**

- ❖ Law Committee recommended insertion of **rule 31B** and **rule 31C** in CGST Rules 2017 for prescribing the manner of determination of the value of supply in case of online gaming and the value of supply of actionable claims in case of casino respectively.
- ❖ This was also deliberated in Officers' meeting and some amendments in rule 31B & 31C and insertion of an Explanation were agreed to in the said meeting, as given below:

▪ **Value of supply in case of online gaming**

Rule 31B. Notwithstanding anything contained in this chapter, the value of supply of online gaming (including of supply of actionable claims involved in online money gaming) shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player.

Agenda 2: Amendments in CGST Act 2017, IGST Act 2017 & CGST Rules and amendment/ issuance of notifications for online gaming/ casinos, etc.
(7/8)

[Vol 1- Pg 17-23]

▪ **Value of supply of actionable claims in case of casino**

Rule 31C. Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player-

(i) for purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or

(ii) for participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.

Explanation: For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

Agenda 2: Amendments in CGST Act 2017, IGST Act 2017 & CGST Rules and amendment/ issuance of notifications for online gaming/ casinos, etc.
(8/8)

[Vol 1- Pg 17-23]

Amendment in Notification No. 66/2017-Central Tax dated 15.11.2017:

- ❖ to provide for time of receipt of advances as time of supply in respect of the supply of specified actionable claims

Issuance of notification under section 15(5) of CGST Act 2017

- ❖ supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos to be notified under section 15(5) of CGST Act 2017 for prescribing the manner of determination of the value of these supplies through CGST Rules, 2017.

Suggestions made in Officers' meeting which will be further deliberated by the Law Committee:

- Sikkim, Goa and Karnataka raised the issue of treatment of unused chips/tokens in case of casinos and unused wallet amount in case of online gaming and as to whether the tax paid on the same is refundable.
 - It was recommended that this issue may be further examined, and if need be suitable amendment in Rules/ issuance of clarification through Circular may be made.
 - Kerala raised the issue of Place of Supply in case of online gaming and suggested that in case of online gaming, recording of PIN code of the recipient should be made mandatory.
 - It was recommended that the issue of requirement of PIN code of the recipient and Place of Supply is a larger issue and may be separately examined in detail by the Law Committee, including in all cases of online supply of goods and services.
 - Haryana suggested that definition of consideration in section 2(31) of CGST Act may also be amended to include “virtual digital assets” also.
 - It was recommended that this is a larger issue and the same may be separately examined by the Law Committee.
 - Gujarat suggested that amendment may be made in section 17(5) of CGST Act for blocking the ITC on account of tax paid by business entities for their employees.
 - It was recommended that the same may be examined by the Law Committee for clarifying through a Circular, if necessary.
-

Issue of treatment of refund/ return of money to the players:

Proposal:

- **Insertion of proviso after proposed rule 31B:**

Provided that any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

- **Insertion of proviso after proposed rule 31C:**

Provided that any amount returned or refunded by the casino to the payer on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

THANK YOU

Section 2(80A) CGST Act

Rationale for amendment	Proposal	Suggested formulation
The term “online gaming” needs to be defined in the CGST Act.	insertion of clause (80A) for defining “online gaming” in the CGST Act.	Section 2 (80A) "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming.



Section 2(80B) CGST Act

Rationale for amendment	Proposal	Suggested formulation
The term “online money gaming” needs to be defined in the CGST Act.	insertion of clause (80B) for defining “online money gaming” in the CGST Act.	Section 2 (80B) "online money gaming " means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any law for the time being in force.



Section 2(102A) CGST Act

Rationale for amendment	Proposal	Suggested formulation
The term “specified actionable claims” need to be defined in the CGST Act.	insertion of clause (102A) for defining “specified actionable claim” in the CGST Act	(102A) “specified actionable claim” means actionable claim involved in or by way of (i) betting; or (ii) casinos; or (iii) gambling; or (iv) horse racing; or (v) lottery; or (vi) online money gaming.



Section 2(105) CGST Act



Rationale for amendment	Proposal	Suggested formulation
The definition of “supplier” in the CGST Act needs amendment so as to provide for a deeming provision to treat a person as supplier in respect of a supply of specified actionable claims..	insertion of a proviso in clause (105) to provide for a deeming provision to treat a person as supplier in respect of a supply of specified actionable claims.	<p>Section 2 (105) “supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;</p> <p>Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money’s worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.</p>

Section 2(117A) CGST Act

Rationale for amendment	Proposal	Suggested formulation
The term “virtual digital asset” needs to be defined in the CGST Act.	insertion of clause (117A) for defining “virtual digital asset” in the CGST Act.	<p>Section 2 (117A) “virtual digital asset” shall have the same meaning as assigned to it in section 2(47A) of Income Tax Act, 1961 (43 of 1961).</p>



Section 24 CGST Act

Rationale for amendment	Proposal	Suggested formulation
Section 24 provides for compulsory registration in certain cases. It is proposed that a person supplying online money gaming from a place outside India to a person in India may be required to get mandatorily registered under GST. Accordingly, an amendment is proposed in section 24 to cover a person supplying online money gaming from a place outside India to a person in India under compulsory registration.	insertion of clause (xia) for making registration under GST compulsory for a person supplying online money gaming from a place outside India to a person in India.	24. Compulsory registration in certain cases. — Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,— (xia) every person supplying online money gaming from a place outside India to a person in India;



Entry 6, Schedule III CGST Act

Rationale for amendment	Proposal	Suggested formulation
Schedule III of CGST Act contains activities or transactions which shall be treated neither as a supply of goods nor a supply of services. Entry 6 of the said Schedule is “Actionable claims, other than lottery, betting and gambling”. There is a need to provide clarity in Entry 6 so as to specifically provide that “specified actionable claims” (which include actionable claims involved in or by way of casinos, horse racing and online money gaming) are not covered under the said entry.	Entry 6 to be amended to exclude “specified actionable claims” from the said Entry.	6. Actionable claims, other than lottery, betting and gambling specified actionable claims.



Section 2(17) IGST Act

Rationale for amendment	Proposal	Suggested formulation
Clause (17) of section 2 defines online information database access or retrieval services. The said definition includes online gaming. However, amendment is required in the said definition of online information database access or retrieval services so as to exclude “online money gaming” from the said definition.	to amend S. No. (vii) of clause (17) so as to exclude “online money gaming” from definition of “online information database access or retrieval services”.	(17) “online information database access or retrieval services”.... (vii) online gaming, excluding online money gaming ;



Section 5 IGST Act



Rationale for amendment	Proposal	Suggested formulation
<p>Sub-section (1) of section 5 provides for levy of integrated tax on all inter-State supplies of goods or services or both and for collection of the same in the manner as may be prescribed.</p> <p>However, the proviso to sub-section (1) of section 5 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Customs Tariff Act, 1975 at the point when the duties of customs are levied on the said goods under section 12 of Customs Act, 1962.</p> <p>In case of intangible goods, it may not be possible to levy and collect integrated tax on imports in the manner as provided in the said proviso, as the goods may not be physically crossing customs frontiers. Accordingly, there may be a need to amend the said proviso so as to enable the government to notify certain goods for whom the said proviso may not be applicable for levy and collection of integrated tax and in whose case, integrated tax shall be levied and collected in the manner specified in section 5(1) only.</p>	<p>proviso to sub-section (1) needs to be amended to enable the government to notify certain goods for whom the said proviso may not be applicable for levy and collection of integrated tax and in whose case, integrated tax shall be levied and collected in the manner specified in section 5(1) only.</p>	<p>Section 5. Levy and collection. -</p> <p>(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:</p> <p>Provided that the integrated tax on goods, other than goods as may be notified by the Government on the recommendations of the Council, imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.</p>

Section 14A IGST Act



Rationale for amendment	Proposal	Suggested formulation
<p>There is a need for special provisions to be inserted in the Act for supply of online money gaming by a person located outside the taxable territory to a person in India. Such provisions may provide for:</p> <p>(i) liability on the said supplier for paying integrated tax on such supply.</p> <p>(ii) Single registration under the Simplified Registration Scheme referred to in section 14 of this Act for the said supplier.</p> <p>(iii) blocking of access by the public to any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier, in case of failure to comply with the above provisions.</p>	<p>a new section 14A is proposed to be inserted to provide for special provision for supply of online money gaming by a person located outside the taxable territory to a person in India.</p>	<p>14A. Special provision for online money gaming supplied by a person located outside the taxable territory.</p> <p>(1) A supplier of online money gaming as defined in clause (80B) of section 2 of the CGST Act, 2017 not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.</p> <p>(2) For the purposes of complying with provisions of sub section (1), the supplier of online money gaming shall take a single registration under the Simplified Registration Scheme referred to in section 14 of this Act:</p> <p>Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:</p> <p>Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.</p> <p>(3) In case of failure to comply with provisions of sub section (1) and/or sub section (2) above by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000 (21 of 2000), any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.</p>

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 51st meeting held on 2nd August, 2023, the GST Council had ratified all the notifications, circulars, and orders issued up to 26.07.2023.

2. In this respect, the following notifications and circulars issued after 26.07.2023 till 29.09.2023 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. 27/2023-Central Tax dated 31.07.2023	Seeks to notify the provisions of section 123 of the Finance Act, 2021 (13 of 2021).
		2. Notification No. 28/2023-Central Tax dated 31.07.2023	Seeks to notify the provisions of sections 137 to 162 of the Finance Act, 2023 (8 of 2023).
		3. Notification No. 29/2023-Central Tax dated 31.07.2023	Seeks to notify special procedure to be followed by a registered person pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018.
		4. Notification No. 30/2023-Central Tax dated 31.07.2023	Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.
		5. Notification No. 31/2023-Central Tax dated 31.07.2023	Seeks to amend Notification No. 27/2022 dated 26.12.2022.

		6. Notification No. 32/2023-Central Tax dated 31.07.2023	Seeks to exempt 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.
		7. Notification No. 33/2023-Central Tax dated 31.07.2023	Seeks to notify “Account Aggregator” as the systems with which information may be shared by the common portal under section 158A of the CGST Act, 2017.
		8. Notification No. 34/2023-Central Tax dated 31.07.2023	Seeks to waive the requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions.
		9. Notification No. 36/2023-Central Tax dated 04.08.2023	Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers.
		10. Notification No. 37/2023-Central Tax dated 04.08.2023	Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons.
		11. Notification No. 38/2023-Central Tax dated 04.08.2023	Seeks to make amendments (Second Amendment, 2023) to the CGST Rules, 2017.
		12. Notification No. 39/2023-Central Tax dated 17.08.2023	Seeks to amend Notification No. 02/2017-Central Tax dated 19.06.2017
		13. Notification No. 41/2023-Central Tax dated 25.08.2023	Seeks to extend the due date for furnishing FORM GSTR-1 for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur

		14. Notification No. 42/2023-Central Tax dated 25.08.2023	Seeks to extend the due date for furnishing FORM GSTR-3B for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur
		15. Notification No. 43/2023-Central Tax dated 25.08.2023	Seeks to extend the due date for furnishing FORM GSTR-3B for quarter ending June, 2023 for registered persons whose principal place of business is in the State of Manipur
		16. Notification No. 44/2023-Central Tax dated 25.08.2023	Seeks to extend the due date for furnishing FORM GSTR-7 for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur
		17. Notification No. 45/2023-Central Tax dated 06.09.2023	Seeks to make amendments (Third Amendment, 2023) to the CGST Rules, 2017.
		18. Notification No. 47/2023-Central Tax dated 25.09.2023	Seeks to amend Notification No. 30/2023-CT dated 31st July, 2023
		19. Notification No. 48/2023-Central Tax dated 29.09.2023	Seeks to notify the provisions of the Central Goods and Services Tax (Amendment) Act, 2023
		20. Notification No. 49/2023-Central Tax dated 29.09.2023	Seeks to notify supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos under section 15(5) of CGST Act
		21. Notification No. 50/2023-Central Tax dated 29.09.2023	Seeks to amend Notification No. 66/2017-Central Tax dated 15.11.2017 to exclude specified actionable claims

		22. Notification No. 51/2023-Central Tax dated 29.09.2023	Seeks to make amendments (Third Amendment, 2023) to the CGST Rules, 2017 in supersession of Notification No. 45/2023 dated 06.09.2023
	Central Tax (Rate)	1. Notification No. 11/2023-Central Tax (Rate), dated 29.09.2023	Seeks to amend Notification No 01/2017- Central Tax (Rate) dated 28.06.2017.
Notifications under IGST Act / IGST Rules	Integrated Tax	1. Notification No. 01/2023- Integrated Tax, dated 31.07.2023	Seeks to notify all 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.
		2. Notification No. 02/2023- Integrated Tax, dated 29.09.2023	Seeks to notify the provisions of the Integrated Goods and Services Tax (Amendment) Act, 2023
		3. Notification No. 03/2023- Integrated Tax, dated 29.09.2023	Seeks to notify the supply of online money gaming as the supply of goods on import of which, integrated tax shall be levied and collected under sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017
		4. Notification No. 04/2023- Integrated Tax, dated 29.09.2023	Seeks to provide Simplified registration Scheme for overseas supplier of online money gaming
	Integrated Tax (Rate)	1. Notification No. 11/2023-Integrated Tax (Rate), dated 26.09.2023	Seeks to amend notification No. 8/2017- Integrated Tax (Rate) dated 28.06.2017 to implement decisions of the 50th GST Council.
		2. Notification No. 12/2023- Integrated Tax (Rate), dated 26.09.2023	Seeks to amend notification No. 09/2017- Integrated Tax (Rate) dated 28.06.2017 to implement decisions of the 50th GST Council.
		3. Notification No. 13/2023- Integrated Tax (Rate), dated 26.09.2023	Seeks to amend notification No. 10/2017- Integrated Tax (Rate) dated

			28.06.2017 to implement decisions of the 50th GST Council.
		4. Notification No. 14/2023- Integrated Tax (Rate), dated 29.09.2023	Seeks to amend Notification No 01/2017- Integrated Tax (Rate) dated 28.06.2017.
Notifications under UTGST Act / UTGST Rules	Union Territory Tax (Rate)	1. Notification No. 11/2023- Union Territory Tax (Rate), dated 29.09.2023	Seeks to amend Notification No 01/2017- Union territory Tax (Rate) dated 28.06.2017.
Circulars under CGST Act		1. Circular No. 200/12/2023-GST dated 01.08.2023	Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023
		2. Circular No. 201/13/2023-GST dated 01.08.2023	Clarifications regarding applicability of GST on certain services

3. It is mentioned that some of the notifications referred in Para 2 above have been issued as per the recommendations of GST Implementation Committee (GIC). 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 took certain decisions after the 51st GST Council meeting. These decisions are placed before the council for information. The details of the decisions taken are given below:

1. Decision of GIC by circulation on 25th August, 2023 in respect of extension of due dates in filing of GSTR-1, GSTR-3B and GSTR-7 till 25th August, 2023 in the State of Manipur due to breakdown of internet services in the state

a. In the agenda note received from Department of Revenue, it was stated that a request had been received from Manipur that due to volatile law and order situation in the State, mobile data services and internet/ data services were under suspension due to which timely filing of returns in GSTR-1, GSTR 3B and GSTR 7 for the month of April 2023, May 2023, June 2023 and July, 2023 by registered persons in Manipur was not possible in the State. Accordingly, it was requested to extend the due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for the month of April, May, June and July, 2023 till 25.08.2023.

b. The agenda note further brought to notice that in view of the prevailing 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, May and June 2023 for the registered persons of State of Manipur had been extended earlier as below:

(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;

(iii) due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for April, May and June, 2023 were thereafter extended until 31.07.2023 vide notifications dated 17.07.2023;

Accordingly, approval of GIC was sought for extending the timelines as stated above.

c. **Decision :** The members of GIC approved the above proposal to extend the extend the due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for the months of April 2023, May 2023, June 2023 and July, 2023 till 25.08.2023.

d. **Implementation Status:** In pursuance of the GIC dated 25.08.2023, the Notification No 41/2023-Central Tax dated 25.08.2023, Notification No 42/2023-Central Tax dated 25.08.2023, Notification No 43/2023-Central Tax dated 25.08.2023, Notification No 44/2023-Central Tax dated 25.08.2023 were issued to extend the due dates of filing FORM GSTR-1, GSTR-7 and GSTR-3B for the month of April, May, June and July, 2023 till 25.08.2023 in the State of Manipur.

2. Decision of GIC by circulation on 23rd September, 2023 on data sharing request by Government of Tamil Nadu

a. In the agenda note received from Department of Revenue, it was mentioned that Government of Tamil Nadu (Commissionerate of Textiles) was making suitable policies for development of the Textile Industry in respect of Textile sectors such as Ginning / Spinning /Warping/Sizing/ Weaving/Knitting/ Processing/ Garmenting/ Composite Units/ Technical Textiles/Textile Machinery Manufacturing/Textile Accessories Manufacturing/ Textile Dyes and Chemical Manufacturing for which aggregated GST data was a critical input.

b. The format in which the data is required by is as below:

1	Centre/State Government	State Government, Tamil Nadu
2	Ministry/ Department	Handlooms, Handicrafts, Khadi and Textiles HOD details; - Commissioner of Textiles (Department of Textiles, Tamil Nadu)
3	Name of Agency	Commissionerate of Textiles, Chennai
4	Data items on which aggregation needs to be done	As per Format given below
5	Data items of which aggregates are required	
6	Period for which data is to be aggregated	Aggregated data on the Financial Year
7	Whether one time or recurring	Recurring on every Financial Year
8	Periodicity if recurring	Periodically required based on Financial Years
9	Purpose for which data is being sought	Proposes to release New Textile Policy and various new schemes by the Hon'ble Chief Minister of Tamil Nadu for the betterment of the Textile Industry
10	Details of Contact Person	a. Name - V.K. Ananda Kumar b. Designation - Deputy Director (Admin and Spinning) c. Phone no. 044-45020047, Extn no. 112 d. e-mail - statisticaldata23@gmail.com,

c. It was stated in the agenda note that the GST Council in its 48th meeting has already approved the policy of GST data sharing with other Ministries/Departments wherein it was agreed that any agency that intends to access summary data pertaining to GST should give the details in approved format to the Department of Revenue for further processing and to place it before the GST Implementation Committee (GIC). Accordingly, approval of GIC was sought for sharing of GST data with Commissionerate of Textiles, Government of Tamil Nadu.

d. **Decision :** The members of GIC approved the above proposal regarding sharing of GST data with Commissionerate of Textiles, Government of Tamil Nadu.

3. Decision of GIC by circulation on 23rd September, 2023 in respect of extension of time for implementation of Notification no. 30/2023 Central Tax dated 31/07/2023

a. In the agenda note received from Department of Revenue it was mentioned that based on the recommendations of the GST Council in its 50th meeting, Central Government had notified the special procedure vide Notification No 30/2023 Central Tax dated 31.07.2023 to be followed by the registered persons of the goods mentioned in the schedule to the said notification, including pan masala, chewing tobacco, gutkha, etc. The said special procedure envisages submission of the monthly statement (SRM-IV) and various other details by the concerned registered taxpayer through online mode for which various Forms such as SRM –I, SRM-IA, SRM-II A, SRM-IIB, etc need to be made available on online portal. Such online FORMS were not available on the portal at this juncture.

b. The agenda note further mentioned that representations had been received from various trade associations and industry representatives requesting for postponement/ extension of time limit for implementation of said special procedure notified vide Notification No 30/2023 Central Tax dated 31.07.2023, due to the unavailability of said FORMs on the portal and also considering numerous other practical challenges faced by the industry such as unavailability of model number/manufacturer of old and used packing machines and time required to obtain the said information, segregation of consumption of electricity between that used for manufacturing of specified goods and that used for other purposes, measurement of waste on daily basis, need for clarification about various issues pertaining to implementation of special procedure, etc.

c. The agenda note mentioned that the status of development of functionality for the said forms on the portal had been checked from GSTN. It was gathered from GSTN that significant time is needed to develop the online facility for the said forms as per the said special procedure. It may be recalled that GoM of Capacity Based Taxation had recommended that these special procedures may be implemented through system based measures without requiring manual interface.

d. The agenda note further stated that the above mentioned difficulties were deliberated by the Law Committee in its meeting dated 31.08.2023/01.09.2023 and the Law Committee recommended that the implementation of the scheme may be deferred to 1st January 2024 since no functionality has yet been made available on the portal. In the meantime, GSTN, in coordination with the state of Uttar Pradesh, shall develop the said online functionality and make all efforts to make it available by 31st Dec, 2023, so that the scheme can be implemented from 1st January, 2024. Further, the Law Committee has also recommended for examination of the issues being raised by the trade in various representations by a sub-committee headed by the state of Uttar Pradesh and including Odisha, Madhya Pradesh, GSTN and GST Policy Wing, which will give its recommendations to the Law Committee within one month.

e. Accordingly, it was proposed in the agenda note that in the meantime, as discussed above, the implementation of the scheme may be deferred to 01.01.2024, by issuing a notification (to be effective

from 31.07.2023) specifying 01.01.2024 as the date on which the provisions of Notification No. 30/2023 Central Tax dated 31.07.2023 shall come into effect. The said proposal was placed before the GIC for deliberation and approval.

f. **Decision :** The members of GIC approved the above proposal to defer implementation of the scheme by issuing a notification (to be effective from 31.07.2023) specifying 1st January 2024 as the date on which the provisions of Notification No. 30/2023 Central Tax dated 31.07.2023 shall come into effect.

g. **Implementation Status:** In pursuance of the GIC decision dated 23.09.2023, the Notification No. 47/2023- Central Tax dated 25.09.2023 was issued to defer implementation of the scheme specifying 1st January 2024 as the date on which the provisions of Notification No. 30/2023 Central Tax dated 31.07.2023 shall come into effect.

4. Decision of GIC by circulation on 22nd September, 2023 in respect of amendments in CGST Rules, 2017 and issuance of notifications post Central Goods and Services Tax (Amendment) Act, 2023 and The Integrated Goods and Services Tax (Amendment) Act, 2023 pertaining to overseas supplier of online money gaming

a. In the agenda note received from Department of Revenue it was mentioned that the GST Council in its 51st meeting held on 02.08.2023 recommended certain amendments in the CGST Act 2017 and IGST Act 2017, to provide clarity on the taxation of supplies in casinos, horse racing and online gaming. It was also recommended by the Council that amendments in CGST Act and IGST Act may be done at the earliest by the Centre and the States, so that these amendments may be brought into effect from 01.10.2023. The Central Goods and Services Tax (Amendment) Act, 2023 and The Integrated Goods and Services Tax (Amendment) Act, 2023 have been passed by the Parliament as per the recommendations made by the GST Council in its 51st meeting. Further, the Council in its 51st meeting had also recommended issuance of certain notifications and insertion of rule 31B & 31C in CGST Rules, 2017.

b. The agenda note further stated that certain consequential amendments are further required in CGST Rules, 2017 and FORMS in respect of a person supplying online money gaming from a place outside India to a person in India. Further, notification under the amended proviso to section 5(1) of IGST Act will be required to be issued to exclude the supply of online money gaming from the said proviso. Also, Simplified Registration Scheme as per new section 14A of IGST Act (read with section 14 of IGST Act) will be required to be notified in respect of a person supplying online money gaming from a place outside India to a person in India. Accordingly, Law Committee deliberated on the aforementioned issues in its meeting held on 31.08.2023 and 01.09.2023 and recommended the following amendments in CGST Rules, FORMS and issuance of certain notifications as below:

A. Amendment in CGST Rules, 2017:

1. Amendment in rule 8(1)

Rule 8. Application for registration. –

(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51 , a person required to collect tax at source under section 52, **a person supplying online money gaming from a place outside India to a person in India as referred in**

section 14A of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and a person supplying online information and database 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) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant") shall, before applying for registration, declare his Permanent Account Number, State or Union territory in **Part A of FORM GST REG-01** on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

2. **Amendment in rule 14(1)**

Rule 14. Grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India. -

(1) Any person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient or any person supplying online money gaming from a place outside India to a person in India shall electronically submit an application for registration, duly signed or verified through electronic verification code, in **FORM GST REG-10**, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

3. **Amendment in proviso to 46(f)**

Provided that in cases involving supply of online money gaming or in cases 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 of the State of the recipient and the same shall be deemed to be the address on record of the recipient.

4. **Amendment in rule 64**

Rule 64. Form and manner of submission of return by persons providing online information and data base access or retrieval services and by persons supplying online money gaming from a place outside India to a person in India.-

Every registered person either providing online money gaming from a place outside India to a person in India, or 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) 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.

5. **Amendment in proviso to sub-rule (3) of rule 87**

Provided further that a person supplying online information and database 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) **or a person supplying online money gaming from a place outside India to a person in India as referred to in section 14A of the Integrated Goods and Services Tax Act, 2017 (13 of 2017)** may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Inter bank Financial Telecommunication payment network, from the date to be notified by the Board

B. Amendments in FORMS

FORM GST REG-10

[See rule 14(1)]

Application for registration of person supplying online money gaming from a place outside India to a person in India or for registration of person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient person in India, ~~other than a registered person.~~

Part –A

(i)	Legal name of the person	
(ii)	Tax identification number or unique number on the basis of which the entity is identified by the Government of that country	
(ii) a)	Type of supply	(a) Supply of online money gaming (b) Supply of online information and database access or retrieval services (c) Both (a) and (b) above
(iii)	Name of the Authorised Signatory	

(iv)	Email Address of the Authorised Signatory	
(v)	Name of the representative appointed in India, if any	
	(a) Permanent Account Number of the representative in India	
	(b) Email Address of the representative in India	
	(c) Mobile Number of the representative in India (+91)	
Note- Relevant information submitted above is subject to online verification, where practicable, before proceeding to fill up Part-B.		

Part -B

1.	Details of Authorised Signatory		
	First Name	Middle Name	Last Name
	Photo		
	Gender		Male / Female / Others
	Designation		
	Date of Birth		DD/MM/YYYY
	Father's Name		
	Nationality		
	Aadhaar, if any		
	Address of the Authorised Signatory		Address line 1
Address line 2			
Address line 3			
2.	Date of commencement of the online service or online money gaming in India.		DD/MM/YYYY

3	Uniform Resource Locators (URLs) of the website/ platform/ name of the application, etc, as applicable through which online money gaming or online information and database access or retrieval services taxable services are provided: 1. 2. 3...					
4	Jurisdiction		Center		Bengaluru West, CGST Commissionerate	
5	Details of Bank Account of representative in India(if appointed)					
	Account Number		Type of account			
	Bank Name	Branch Address	IFSC			
6	<p>Documents Uploaded</p> <p><i>A customized list of documents required to be uploaded (refer Instruction) as per the field values in the form</i></p>					
7	<p>Declaration</p> <p><i>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.</i></p> <p><i>I, _ hereby declare that I am authorised to sign on behalf of the Registrant. I would charge and collect tax liable from the non-taxable non-assesse online recipient located in taxable territory (in case of online information and database access or retrieval services) and/or from the recipient located in taxable territory (in case of online money gaming) and deposit the same with Government of India. Signature</i></p> <p>Place: _____ Name of Authorised Signatory: _____</p> <p>Date: _____ Designation: _____</p>					

Note: Applicant will require to upload declaration (as per under mentioned format) along with scanned copy of the passport and photograph.

List of documents to be uploaded as evidence are as follows:-

1.	<p>Proof of Place of Business of representative in India, if any:</p> <p>(a) For own premises – Any document in support of the ownership of the premises like Latest Property Tax Receipt or Municipal Khata copy or copy of Electricity Bill.</p> <p>(b) For Rented or Leased premises – A copy of the valid Rent / Lease Agreement with any document in support of the ownership of the premises of the Lessor like Latest Property Tax Receipt or Municipal Khata copy or copy of Electricity Bill.</p> <p>(c) For premises not covered in (a) and (b) above – A copy of the Consent Letter with any document in support of the ownership of the premises of the Consenter like Municipal Khata copy or Electricity Bill copy. For shared properties also, the same documents may be uploaded.</p>
2.	<p>Proof of :</p> <p>Scanned copy of the passport of the Non -resident tax payer with VISA details. In case of Company/Society/LLP/FCNR/ etc. person who is holding power of attorney with authorisation letter.</p> <p>Scanned copy of Certificate of Incorporation if the Company is registered outside India or in India</p> <p>Scanned copy of License is issued by origin country</p> <p>Scanned copy of Clearance certificate issued by Government of India</p>
3	<p>Bank Account Related Proof:</p> <p>Scanned copy of the first page of Bank passbook / one page of Bank Statement Opening page of the Bank Passbook held in the name of the Proprietor / Business Concern – containing the Account No., Name of the Account Holder, MICR and IFSC and Branch details.</p>
4.	<p>Scanned copy of documents regarding appointment as representative in India, if applicable</p>

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 online recipient (as defined in Integrated Goods and Services Tax Act, 2017) and to registered persons in India and details of supplies of online money gaming by a person located outside India to a person 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 of online information and database access or retrieval services made to 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 of online information and database access or retrieval services to non-taxable 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 of online information and database access or retrieval services 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)

<i>GSTIN</i>	<i>Taxable Value</i>
<i>1</i>	<i>2</i>

5C. Amendments to the taxable outward supplies of online information and database access or retrieval services 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)

<i>Month</i>	<i>Original GSTIN</i>	<i>Revised GSTIN</i>	<i>Taxable value</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>

5D. Supplies of online money gaming made to a person in India

(Amount in Rupees)

<i>Place of supply (State/UT)</i>	<i>Rate of tax</i>	<i>Taxable value</i>	<i>Integrated tax</i>	<i>Cess</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>

5E. Amendments to supplies of online money gaming made to a person 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

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, 5D and 5E)					

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

C. Issuance of notifications

1. Issuance of notification for notifying the supply of online money gaming as the supply of goods on import of which, integrated tax shall be levied and collected not under the said proviso but shall be levied and collected under sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017.

**[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 XXth October, 2023

G.S.R. (E):— In exercise of powers conferred under proviso to sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Government, on the recommendations of the Council, notifies the supply of online money gaming as the supply of goods on import of which, integrated tax shall be levied and collected not under the said proviso but shall be levied and collected under sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017.

2. This notification shall come into force on the XXst day of October, 2023.

[F. No. CBIC- 20021/1/2023-GST]

(Alok Kumar)

Director

2. Issuance of notification for providing for Simplified registration Scheme as per new section 14A of IGST Act (read with section 14 of IGST Act) in respect of a person supplying online money gaming from a place outside India to a person in India.

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

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

NOTIFICATION

No. XX/2023 – Integrated Tax

New Delhi, the XXthOctober, 2023

G.S.R . (E). -In exercise of the powers conferred by sub-section (2) of section 14A of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereinafter referred to as the said Act) read with section 14 of the said Act and sub-rule (2) of rule 14 of the Central Goods and Services Tax Rules, 2017, the Central Government hereby notifies the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration in case of supply of online money gaming provided or agreed to be provided by a person located in non-taxable territory and received by a person in India.

Explanation.-For the purposes of this notification, “online money gaming” shall have the same meaning as assigned to it in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017).

2. This notification shall come into force on the XXstday of October, 2023.

[F. No. CBIC- 20021/1/2023-GST]

(Alok Kumar)

Director

c. The agenda note further mentioned that as the Council had recommended in 51st meeting that amendments in CGST Act and IGST Act may be brought into effect from 01.10.2023, the above mentioned amendments in CGST Rules, FORMs and issuance of notifications are required to be done before 01.10.2023 as no meeting of GST Council was scheduled anytime soon. Accordingly, the agenda is placed before the GIC for deliberation and approval.

d. **Decision :** The members of GIC approved the above proposal regarding amendments in CGST Rules, 2017 and issuance of notifications post Central Goods and Services Tax (Amendment) Act, 2023 and The Integrated Goods and Services Tax (Amendment) Act, 2023 pertaining to overseas supplier of online money gaming.

e. **Implementation Status:** In pursuance of the GIC decision dated 22.09.2023, the Notification No. 48/2023- Central Tax dated 29.09.2023, Notification No. 49/2023- Central Tax dated 29.09.2023, Notification No. 50/2023- Central Tax dated 29.09.2023, Notification No. 51/2023- Central Tax dated 29.09.2023 and Notification No. 02/2023-Integrated Tax dated 29.09.2023, Notification No. 03/2023- Integrated Tax dated 29.09.2023, Notification No. 04/2023- Integrated Tax dated 29.09.2023 were issued.

5. Decision of GIC by circulation on 29th September, 2023 in respect of carrying out amendments to notification No. 1/2017-CT (R) dated 28-06-2017 consequent to amendment of CGST Act, 2017

a. In the Agenda note was received from Department of Revenue it was mentioned that the GST Council in the 50th meeting had deliberated on the 2nd report of the Group of Ministers on Casinos, Race Courses and Online Gaming and had recommended that the actionable claims supplied in casinos, horse racing and online gaming may be taxed @ 28% on full face value irrespective of whether the activities are a game of skill or chance and the law may be amended accordingly. Further, the GST Council in the 51st meeting held on 2nd August, 2023 had recommended certain amendments in the CGST Act, 2017 and IGST Act, 2017 so as to bring clarity in taxation of the actionable claims in Casinos, Horse Racing and Online Gaming.

b. It was mentioned in the agenda note that the amendments to the CGST Act and IGST Act as recommended by the Council had since been carried out. They are to come into force from a date to be notified. One of the amendments carried out in CGST Act, 2017 is to substitute the words “lottery, betting and gambling” in para 6 of Schedule III with the words “specified actionable claims”. “Specified actionable claim” has been defined to mean actionable claim involved in or by way of

- i. betting; or
- ii. casinos; or
- iii. gambling; or
- iv. horse racing; or
- v. lottery; or
- vi. online money gaming.

The agenda note further mentioned that consequential changes were required to be made to Sl. No. 228 of Schedule IV of notification No. 1/2017-CT (R) dated 28-06-2017 which prescribes GST rate of 28%

on lottery and in Sl. No. 229 of Schedule IV which prescribes GST rate of 28% on actionable claim in the form of chance to win in betting, gambling or horse racing in race club, in order to align these entries with the amended para 6 of Schedule III of CGST Act, 2017.

c. The agenda note stated that since no GST Council was scheduled to be held in near future and the changes are proposed to be implemented w.e.f 01.10.2023, approval of GIC was required for amendment of notification No. 1/2017-CT (R) dated 28-06-2017 (and corresponding notifications under IGST, UTGST and SGST Acts) so as to align Sl. No. 228 of Schedule IV of notification No. 1/2017-CT (R) dated 28-06-2017 which prescribes GST rate of 28% on lottery and Sl. No. 229 of Schedule IV which prescribes GST rate of 28% on actionable claim in the form of chance to win in betting, gambling or horse racing in race club, with the amended para 6 of Schedule III of CGST Act, 2017. Accordingly, the agenda is placed before the GIC for deliberation and approval.

d. **Decision :** The members of GIC approved the above proposal to amendment of notification No. 1/2017-CT (R) dated 28-06-2017 (and corresponding notifications under IGST, UTGST and SGST Acts) so as to align Sl. No. 228 of Schedule IV of notification No. 1/2017-CT (R) dated 28-06-2017 which prescribes GST rate of 28% on lottery and Sl. No. 229 of Schedule IV which prescribes GST rate of 28% on actionable claim in the form of chance to win in betting, gambling or horse racing in race club, with the amended para 6 of Schedule III of CGST Act, 2017.

e. **Implementation Status:** In pursuance of the GIC decision dated 29.09.2023, the Notification No. 11/2023- Central Tax (Rate) dated 29.09.2023, Notification No. 14/2023- Integrated Tax (Rate), dated 29.09.2023 and Notification No. 11/2023- Union Territory Tax (Rate), dated 29.09.2023 were issued.

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

Agenda Item 3(i): Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals.

It may be recalled that vide the Finance Act, 2023, amendments to section 109 and 110 of the CGST Act, 2017 were carried out and the same were notified vide notification No. 28/2023–Central Tax dated 31st July, 2023. Subsequently, a proposal was sent by the Department of Revenue to the Hon’ble Chief Justice of India with a request to Chair or to nominate a Judge of the Supreme Court to chair the Search-cum-Selection Committee to make recommendations for appointment of Judicial Members and Technical Member (Centre) of GSTAT and to nominate a retired Judge of Supreme Court or a retired Chief Justice of High Court as a Member of ScSC.

2. In response, the following observations were received from the Registrar, Supreme Court of India:

- a. The post of the President of the Appellate Tribunal is vacant at present and no action appears to have been taken by the Government for appointment of the President of the Appellate Tribunal, who is one of the members of the Search-cum-Selection Committee under Section 110 (4) (b) (iv) (B) of amended CGST Act 2017;
- b. *The prescribed maximum age limit, under Section 110 (9) and (10), for the posts of President and Members is 67 and 65 years whereas under the Tribunals Reforms Act, 2021 it is 70 and 67 years respectively. (as per the CGST Act 2017 and recommendations made by GoM constituted vide O.M No. A-50050/150/2018-CESTAT-DOR)*
- c. *A provision relating to eligibility of an Advocate with a standing of 10 years at the Bar for appointment as a Judicial Member, akin to the one available in the Rules framed under the Tribunal Reforms Act, 2021 is missing in the amended CGST Act, 2023.*

3. Vide para 2(b) and (c) above, it was emphasized that certain provisions of the GSTAT need to be aligned with the Tribunal Reforms Act, 2021. In this context, the relevant portion the Tribunal Reform Act, 2021 and the Tribunal (Condition of Service) Rules, 2021 were referred as under:

- In respect of para (b), proviso to section 3(1) of Tribunal Reform Act, 2021 provides that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member.

Also, section 5 of Tribunal Reform Act, 2021 states that:

- i. *The Chairperson of a Tribunal shall hold office for a term of four years or till he attains the age of seventy years, whichever is earlier.*
 - ii. *The Member of a Tribunal shall hold office for a term of four years or till he attains the age of sixty-seven years, whichever is earlier.*
- In respect of para (c), section 3(3)(b)(iii) of Tribunal (Condition of Service) Rules, 2021 states that:

In case of Customs, Excise and Service Tax Appellate Tribunal under the Customs Act, 1962 (52 of 1962), a person shall not be qualified for appointment as Judicial Member, unless he has been an advocate for ten years with substantial experience in litigation under indirect tax laws in CESTAT, High Court or Supreme Court.

4. Accordingly, the issue of alignment of the provisions of GSTAT with the Tribunal Reform Act & Tribunal (Condition of Service) Rules, 2021, was placed before the Law Committee. Law Committee, in its meeting held on 21.09.2023 approved the following amendments to section 110 of the CGST Act, 2017:

110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.

(1) A person shall not be qualified for appointment as—

(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court;

(b) a Judicial Member, unless he—

(i) has been a Judge of the High Court; or Substitution of new section for section 110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.

(ii) has, for a combined period of ten years, been a District Judge or an Additional District Judge;

(iii) has been an advocate for ten years with substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court;

(c) a Technical Member (Centre), unless he is or has been a member of the Indian Revenue (Customs and Indirect Taxes) Service, Group A, or of the All India Service with at least three years of experience in the administration of an existing law or goods and services tax in the Central Government, and has completed at least twenty-five years of service in Group A;

(d) a Technical Member (State), unless he is or has been an officer of the State Government or an officer of All India Service, not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank, not lower than that of the First Appellate Authority, as may be notified by the concerned State Government, on the recommendations of the Council and has completed twenty-five years of service in Group A, or equivalent, with at least three years of experience in the administration of an existing law or the goods and services tax or in the field of finance and taxation in the State Government:

Provided that the State Government may, on the recommendations of the Council, by notification, relax the requirement of completion of twenty-five years of service in Group A, or equivalent, in respect of officers of such State where no person has completed twenty-five years of service in Group A, or equivalent, but has completed twenty-five years of service in the Government, subject to such conditions, and till such period, as may be specified in the notification.

Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as the President or the Member.

... ..

*(9) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the President of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of ~~sixty-seven~~ **seventy** years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.*

*(10) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Judicial Member, Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of ~~sixty-five~~ **sixty-seven** years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.*

5. Accordingly, amendments to section 110 of the CGST Act, 2017 are placed before the GST Council for approval please. It may be noted, that similar amendments are required to be carried out in the corresponding sections of the respective SGST Acts of the States.

Agenda Item 3(ii): Seeking clarity on various issues

- (i) Regarding taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company.
- (ii) Regarding taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company.

Various representations have been received from trade associations seeking clarity as to whether the offering of personal guarantees by directors of a company to the bank/ financial institutions for sanctioning of credit facilities to the company will be treated as a supply of service or not and whether the same will attract GST or not. Further, clarification is also being sought as to whether the corporate guarantee provided by a holding company to its subsidiary company or by any entity to its related parties, is to be treated as a supply of service or not, and if so what would be the valuation of such supplies.

2. RELEVANT LEGAL PROVISIONS:

2.1 Section 7(1)(c) of the CGST Act, 2017 is reproduced below:

“(1) For the purposes of this Act, the expression - "supply" includes-

...

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

...”

2.2 Further, relevant entries in Schedule I of CGST Act, 2017 are as reproduced below:

“SCHEDULE I: Activities to be treated as supply even if made without consideration

..

(2) 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:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

.....

(4) Import of services by a ¹[person] from a related person or from any of his other establishments outside India, in the course or furtherance of business..”

2.3 Reference is also made to Section 15 of the CGST Act, 2017:

“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.

.....

Explanation. - For the purposes of this Act,-

(a) persons shall be deemed to be "related persons" if-

(i) such persons are officers or directors of one another's businesses;

.....”

2.4 Also, Entry No. 6 of Notification No.13/2017 –CT (Rate) dated 28th June, 2017 is as reproduced below:

“

<i>S.No.</i>	<i>Category of Supply of Services</i>	<i>Supplier of service</i>	<i>Recipient of Service</i>
6.	<i>Services supplied by a director of a company or a body corporate to the said company or the body corporate.</i>	<i>A director of a company or a body corporate</i>	<i>The company or a body corporate located in the taxable territory.</i>

.....”

2.5 Section 2 – Definitions of the **Companies Act, 2013**, defines the following:

*2(46) —**holding company**, in relation to one or more other companies, means a company of which such companies are subsidiary companies;*

*2(87) —**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;

2.6 Rule 28 of CGST Rules, 2017 are as under:

“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.”*

3. Analysis and Proposal:

A. Regarding taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company:

3.1 Under GST, 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. 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.’ Further, as per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Explanation (a) to Section 15 of CGST Act clearly provides that directors and the company are related persons.

3.2 On joint reading of the provisions above, the services that are provided by the director to a company by way of providing personal guarantee to banks/ financial institutions in order to secure credit facilities even without any consideration, will fall under the category of supply of services. Therefore, the same was taxable under GST.

3.3 Now, reference is also made to **RBI Master Circular RBI/2021-22/121** dated 9th November, 2021 in respect of guarantees and co-acceptances. Relevant portion of Para 2.2.9 of the said circular is reproduced below:

“2.2.9 Guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns

Banks should take personal guarantees of promoters, directors, other managerial personnel or major shareholders for the credit facilities granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, banks should be guided by the following broad considerations:

.....

C. Worth of the guarantors, payment of guarantee commission, etc

Where personal guarantees of directors are warranted, they should bear reasonable proportion to the estimated worth of the person. The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly. This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits. During the periodic inspections, the bank's inspectors should verify that this stipulation has been complied with. There may, however, be exceptional cases where payment of remuneration may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their guarantees is considered essential because the new management's guarantee is either not available or is found inadequate.

.....”

3.4 As per the mandate of RBI as per Para 2.2.9 of RBI Master Circular RBI/2021-22/121 dated 9th November, 2021 regarding *guidelines relating to obtaining of personal guarantees of promoters,*

directors, other managerial personnel, and shareholders of borrowing concerns, no consideration can be charged by the director from the company for providing the bank guarantee for the purpose of sanctioning of credit facilities to the said company and therefore, no transaction value can be attributed to the service being provided by the Director.

3.5 As such, when such guarantee is required by the bank or the financial institution from the director of the company for providing credit facility/ loan to the said company and when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, there is no question of such supply/ transaction having any open market value. Accordingly, it appears that when no consideration is paid by the company to the director in any form, directly or indirectly, for providing guarantee to the bank/ financial institutes on their behalf, as per mandate of RBI, the open market value of the said transaction/ supply may be treated as zero. In such a scenario, it appears that the taxable value of the said supply as per section 15 of the CGST Act, 2017 read with rule 28 of the CGST Rules, 2017, may be treated as zero, and no tax may be payable on such supply of service by the director to the company.

3.6 There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In such cases, as per the RBI guidelines provided in Para 2.2.9 (c) of RBI's Circular No. RBI/2021-22/121 dated 9th November, 2021, remuneration can be paid to such directors/ guarantors for providing the bank guarantee. In all these cases, the taxable value of such supply of service may be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.

3.7 Law Committee in its meetings held on 31.08.2023/01.09.2023 and 21.09.2023 deliberated on the issue and recommended issuing a circular to clarify the same as above.

B. Regarding taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company.

4.1 On the issue of providing corporate guarantee between the related companies, even without any monetary consideration, the said activity is taxable as services provided between related persons, as per Schedule I of the CGST Act 2017.

4.2 As per the explanation to sub-section (5) of Section 15 of the CGST Act, read with the definitions of 'holding company' and 'subsidiary company' under Companies Act, 2013, it is clear that the holding company and the subsidiary company are also 'related persons', and hence the corporate guarantee provided by the holding company to its subsidiary company, even without consideration, in the course of furtherance of business are to be treated as 'supply' under GST as per Schedule I of the CGST Act, 2017.

4.3 In such cases, the taxable value of the supply has to be determined as per Rule 28 of the CGST Rules, 2017 which is mainly based on the open market value of such supply or as per value of services of like kind and quality or as per Rule 30 or 31 of CGST Rules, 2017. However, corporate guarantees, unlike bank guarantees, are specific and peculiar to a particular corporate group or company and

therefore external third-party comparisons may not be available or reliable. The commission for providing corporate guarantee generally depends on multiple factors like, inherent credit-worthiness of the concerned company, amount guaranteed, borrowing history of the said company, soundness of the financial statements, current cash flows and income of the company that is being provided the guarantee and the financial relationship of the concerned bank/ financial institutions with the said company etc. Field formations as well as the taxpayers are finding it difficult to arrive at the open market value for such supply of services under Rule 28 of CGST Rules, 2017.

4.4 While in cases, where the recipient is eligible for full input tax credit, as per the second proviso to the rule 28 of CGST Rules, 2017, the value declared in the invoice, if any, shall be deemed to be the open market value of the said supply of services. However, in cases, where the recipient is not eligible for full input tax credit, there are difficulties being faced by the field formation as well as by the taxpayers to determine the taxable value based on the open market value of services, or value of services of like kind and quality or as per Rule 30 or 31. In this regard, it is mentioned that all the banks have got different rates of commission/ charges for bank guarantee ranging from 0.5% to 3%. In some cases, banks may not be charging any commission/ charge at all, depending upon the longstanding relationship with the concerned client. It is also observed that under Rule 10TD pertaining to **Safe Harbour** under Income Tax Rules, 1962, for providing corporate guarantee in eligible international transactions, the minimum acceptable commission/ fee is **one per cent of the amount guaranteed**. Therefore, it is proposed that we may consider adopting the same for the purpose of valuation of the supply of services of providing corporate guarantee in case of related persons under GST also.

4.5 The matter was deliberated by the Law Committee in its meetings held on 31.08.2023/01.09.23 and 21.09.2023 wherein the Law Committee recommended to insert the following sub-rule in Rule 28 of CGST Rules, 2017.

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. -

(1) 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-;

(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.

4.6 The Law Committee also recommended to clarify the applicability of the proposed sub-rule (2) of the rule 28 of CGST Rules, 2017 vide a circular. The circular recommended by the Law Committee is placed at **Annexure-A**.

5. Accordingly, the recommendations of the Law Committee as detailed in para 3.7, 4.5 and 4.6 above are placed before the GST Council for approval.

F. No. CBIC-20016/23/2023 - GST
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 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 with respect to taxability of activity of providing personal bank guarantee by Directors to banks for securing credit facilities for the company. Similarly, clarifications are being sought with respect to taxability and valuation of the activity of providing corporate guarantee by a related person to banks/financial institutions for another related person, as well as by a holding company in order to secure credit facilities for its subsidiary company.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

S. No.	Issue	Clarification
1.	Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.	<p>As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.</p> <p>Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) prescribes the method for determining the value of the supply of goods or services or both between related parties, other than where the supply is made through an agent. In terms of Rule 28 of CGST Rules, the transaction value of such supply of service shall be the open market value of such supply.</p> <p>RBI has provided guidelines for obtaining personal guarantee of promoters, directors and other managerial personnel of the borrowing concerns vide Para 2.2.9 of its Circular No. RBI/2021-22/121 dated 9th November, 2021, which is reproduced below:</p> <p><i>“2.2.9 Guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns</i></p> <p><i>Banks should take personal guarantees of promoters, directors, other managerial personnel or major shareholders for the credit facilities granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the</i></p>

	<p>guarantee may or may not be considered necessary, banks should be guided by the following broad considerations:</p> <p>.....</p> <p><i>C. Worth of the guarantors, payment of guarantee commission, etc</i></p> <p><i>Where personal guarantees of directors are warranted, they should bear reasonable proportion to the estimated worth of the person. The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly. This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits. During the periodic inspections, the bank's inspectors should verify that this stipulation has been complied with. There may, however, be exceptional cases where payment of remuneration may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their guarantees is considered essential because the new management's guarantee is either not available or is found inadequate.</i></p> <p>.....”</p> <p>Accordingly, as per mandate provided by RBI in terms of Para 2.2.9 (C) of RBI's Circular No. RBI/2021-22/121 dated 9th November, 2021, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. As such, when no consideration can be paid for the said transaction by the company to the director in</p>
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		<p>any form, directly or indirectly, as per RBI mandate, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company.</p> <p>There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.</p>
2.	Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.	<p>Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.</p> <p>Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act.</p> <p>In respect of such supply of services by a person to another related person or by a holding</p>

	<p>company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value will be determined as per rule 28 of CGST Rules.</p> <p>Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in rule 28 of CGST Rules vide Notification No. xx/2023 dated xx.xx.2023, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, consequent to insertion of the said sub-rule in rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not.</p> <p>It is clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.</p>
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3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulties, 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(iii): Providing a special procedure for condonation of delay in filing of appeals against demand orders passed until 31st March, 2023.

1.1 Section 107(1) of the CGST Act, 2017 provides that any person aggrieved with the order of the Adjudicating Authority can file an appeal against such order before the Appellate Authority. The said provisions also provide that such appeal shall be filed within a period of **three months from the date on which the order is communicated to such person.**

"Section 107. Appeals to Appellate Authority. —

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person."

1.2 Additionally, Section 107(4) of the CGST Act, 2017 empowers the Appellate Authority to condone the delay in filing of appeal by the aggrieved person. However, the Appellate Authority can condone such a delay only if sufficient cause is shown and the delay is not beyond the period of one month from the actual due date.

"Section 107. Appeals to Appellate Authority. —

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

This is to say that, even when sufficient cause is shown for not filing appeal against a said order within the prescribed time limit, the appellate authority cannot condone the delay beyond one month from the actual due date.

2.1 In this regard, it is to mention that during the initial years of implementation of GST, a number of appeals against demand orders could not be filed with the specified time period i.e., within the limitation period of three months and the permissible delay condonation period of one month, due to various reasons.

2.2 Section 169. Service of notice in certain circumstances. -

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely: -

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

2.3 As per provision in section 169 of the CGST Act, 2017, *any communication to the e-mail address provided at the time of registration or as amended from time to time or making it available on the common portal has been termed as a valid mode of service of notices or orders.* Accordingly, the notices /orders in the above proceedings were served electronically on the common portal. There was no physical service of these notice/orders in many cases, as the law prescribes the common portal also as the valid mode of service of notices and orders. In a lot of cases, the common portal was not accessed by the taxpayers and hence taxpayers were not aware of the notices/ orders issued to them through the common portal.

2.4 Further in the pre-GST era they were used to physical service of the notices, hence were not in habit of checking the portal for the notices/orders. While migrating to GST from the earlier tax system, in many cases, taxpayers have also used their old email ID or mobile numbers. In many cases the email ID or mobile numbers used in migration belonged to CAs or tax practitioners. Same is the situation in cases of GST registrations obtained during initial period of GST. In many cases, entire work of GST filing is done by practitioners. This has also resulted in losing track of orders/notices served on common portal/email.

2.5 It is brought to the notice of the tax authorities that, many of the taxpayers came to know about demand orders only upon initiation of recovery proceedings under section 79 of the CGST Act, 2017 i.e., after lapse of time prescribed for filing of appeals. Thus, the taxpayers are stuck in a situation where they can neither file an appeal nor pay the demand raised by the tax authorities. Many of these appeals filed beyond the specified time period are either pending with the appellate authorities or were rejected earlier for non-adherence to time period specified under Section 107(1) of the CGST Act, 2017.

2.6 At the same time, the recovery books of the authorities are bulging without sufficient recovery. There are many cases where huge sums are involved, and dues are stuck in time barred appeals (at quasi-judicial level) causing non-realization of legitimate revenue and even the part payment towards filing of appeal i.e., pre-deposit. As the appeals are likely to be rejected even if they are filed, in view of limited power of the appellate authority to condone any delays, the pre-deposit amount is also not being realized in the books of the government. If such appeals are allowed by condoning delay, then a large number of such taxpayers are likely to come forward and pay the pre-deposit amount. It is also to be mentioned that due to the non-constitution of GST Appellate Tribunals, the only remedy available to the taxpayers was approaching the Hon'ble High Courts, which might not be always possible for small and medium taxpayers.

3. In order to deal with such time-barred appeals against demand orders passed till specified period i.e., orders passed up to 31.3.2023, it was proposed to provide a one-time relief to taxpayers for filing of appeals.

4. Law Committee in its meetings held on 31.08.23/01.09.23 and 21.09.23 deliberated on the same, and recommended providing a special procedure under section 148 of CGST Act, for taxable persons to file appeal till **31st December 2023**, who could not file an appeal under section 107 of the said Act, against the order passed by the proper officer under section 73 or 74 of the said Act on or before the 31st day of March, 2023 and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107, subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute by the said person, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. The draft notification for the said special procedure as recommended by the Law Committee is placed at **Annexure-A**.

5. Accordingly, the recommendations of the Law Committee as detailed in **para 4** is placed before the GST Council for approval.

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

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS**

NOTIFICATION No. XX/2023 – CENTRAL TAX

New Delhi, dated the xx, 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 taxable persons who could not file an appeal against the order passed by the proper officer under section 73 or 74 of the said Act on or before the 31st day of March, 2023 (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:

2. The said person shall file an appeal against the said order in **FORM GST APL-01** in accordance with sub-section (1) of Section 107 of the said Act, **on or before 31st day of December 2023:**

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification.

3. No appeal shall be filed under this notification, unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub-section (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.
6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017, shall mutatis mutandis, apply to an appeal filed under this Notification.

F. No. CBIC-XXXXXXX/XX/2023-GST]

(Raghavendra Pal Singh)
Director

Agenda Item 3(iv): Law amendment w.r.t. ISD as recommended by the GST Council in its 50th meeting-reg.

GST Council in its 50th meeting recommended that ISD procedure, as laid down in Section 20 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) read with rule 39 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “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. Further, the Council authorised the Law Committee to formulate the requisite law amendments. The Council also recommended that the manner of distribution of ISD credit as provided in section 20 does not require amendment at present.

2. Accordingly, the Law Committee in its meeting held on 31.08.2023 and 01.09.2023 recommended the following amendment in clause(61) of section 2 of the CGST Act, i.e. definition of ISD:

‘(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~~, including invoices in respect of services liable to tax under sub-sections (3) or (4) of Section 9, for or on behalf of a distinct person or distinct persons, as specified in section 25 and who is liable to distribute the input tax credit in respect of such invoices in terms of section 20.

3. Further, section 20 of the CGST Act also needs amendment to explicitly mandate distribution of the common credit including with credit pertaining to common input services which are liable to tax on reverse charge basis. Accordingly, the Law Committee in its meeting held on 31.08.2023 and 01.09.2023 recommended that section 20 of CGST Act may be amended as under:

“20.(1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-sections (3) or (4) of Section 9, for or on behalf of a distinct person or distinct persons as specified in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 of this Act and shall distribute the input tax credit in respect of such invoices.

(2) The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or (4) of Section 9 paid by a distinct person, registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.

(3) The credit of central tax shall be distributed 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.

~~(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 92A]⁴⁶ of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.”~~

Pari-materia amendments would also be required in the **SGST Act**.

4. In view of the aforesaid amendment in Section 20 of CGST Act, the Law Committee also recommended that the methodology for distribution of credit may be incorporated in rule 39 of the CGST Rules and the following rule be substituted for present rule 39 as follows:-

“39. Procedure for distribution of input tax credit by Input Service Distributor.- (1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely:—

- (a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in **FORM GSTR-6** in accordance with the provisions of Chapter VIII of these rules;
- (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;
- (f) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) to one of the recipients "R1", whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula -

$$C_1 = (t_1 / T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t₁" is the turnover, as referred to in clause (d) and (e), of person R₁ during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of clause (d) and (e);

- (g) the Input Service Distributor shall, in accordance with the provisions of clause (d) and (e), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;

- (h) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d) and (e);
- (i) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;
- (j) the input tax credit on account of central tax and State tax or Union territory tax shall-
 - (i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;
 - (ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient as referred to in clause (d) and (e);
- (k) the Input Service Distributor shall issue an Input Service Distributor invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;
- (l) the Input Service Distributor shall issue an Input Service Distributor credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;
- (m) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (j) and the amount attributable to any recipient shall be calculated in the manner provided in clause (f) and such credit shall be distributed in the month in which the debit note is included in the return in **FORM GSTR-6**;
- (n) any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (f), and the amount so apportioned shall be-
 - (i) reduced from the amount to be distributed in the month in which the credit note is included in the return in **FORM GSTR-6**; or

- (ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

(1A) For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under sub-section (3) or (4) of Section 9, a registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note as per the provisions of sub-rule(1A) of rule 54 to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in sub-rule (1).

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in clause ~~(h)~~ (n) of sub-rule (1) shall apply, *mutatis mutandis*, for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause ~~(h)~~ (l) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in **FORM GSTR-6** for the month in which such credit note and invoice was issued.

Explanation.— For the purpose of this rule—

- (i) the term “relevant period” shall be—
- (a) 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
- (b) 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;
- (ii) 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;
- (iii) 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 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.”

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

Agenda Item 3(v): Clarification regarding restoration of provisionally attached property – regarding.

1.1 Section 83 of the CGST Act, 2017 is reproduced below:

Section 83. Provisional attachment to protect revenue in certain cases.-

(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

1.2 Rule 159 of the CGST Rules, 2017 is reproduced below:

Rule 159. Provisional attachment of property. -

(1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of [section 83](#), he shall pass an order in [FORM GST DRC-22](#) to that effect mentioning therein, the details of property which is attached.

*(2) The Commissioner shall send a copy of the order of attachment in [FORM GST DRC-22](#) to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, **which shall be removed only on the written instructions from the Commissioner to that effect** and a copy of such order shall also be sent to the person whose property is being attached under section 83.*

...

(6) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in [FORM GST DRC- 23](#).

2.1 It is observed that while Section 83(2) of CGST Act, 2017 mentions that the provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order i.e. provisional attachment order in the form of **FORM GST DRC-22**, there is no mention of need for issuance of any order to release/ restore the provisionally attached property after expiry of this time period of one year.

2.2 At the same time, Rule 159(2) of CGST Rules, 2017 mentions that the provisional attachment of a property shall be removed **only** on the written instructions from the Commissioner to that effect. Rule 159(6) of CGST Rules, 2017 provides for release of the provisionally attached property by issuance of an order in **FORM GST DRC-23**. As per the said rule, the Commissioner may release the

provisionally attached property by issuing an order in **FORM GST DRC-23**, upon being satisfied that the said property is no longer liable for attachment. However, there is no mention in sub-rule (6) of rule 159 regarding requirement of issuance of order for releasing the provisionally attached property after expiry of the time period of one year from the date of the provisional attachment order in the form of **FORM GST DRC-22**.

2.3 It has been brought to notice that there is a confusion among the concerned revenue authorities, transport authorities, bankers and other such authorities as to whether the said encumbrance placed on the said movable or immovable property automatically expires after a period of one year from the date of **FORM GST DRC – 22**, or the said authorities have to wait for a written instructions from the Commissioner to that effect.

2.4 In this regard, it is to be noted that in the case of 'M/s Balaji Enterprises vs Principal Additional Director General, Directorate General of GST Intelligence, the Hon'ble High Court of Delhi, in its order dated 11.07.2023 has mentioned the following:

“2. We find that there are a large number of matters where the orders freezing the bank accounts under Section 83 of the Central Goods and Service Tax Act, 2017 (hereafter ‘the CGST Act’) have elapsed in terms of the Section 83(2) of the CGST Act, but the bankers are not permitting the operation of the bank accounts for want of further communication from the Department.

3. Clearly, the tax payers are not required to run from pillar to post for resuming the operation of the bank accounts, which were interdicted by the orders that are no longer operative. Prima facie, we are of view that the concerned officer freezing the bank account under Section 83 of the CGST Act is also obliged to communicate to the concerned bank that the said order is no longer operative, once the period of one year has elapsed.

4. Clearly, a procedure is required to be adopted to obviate any such petitions or applications.”

3. It has been observed that as Section 83(2) of CGST Act, 2017 clearly provides that the provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the provisional attachment order (i.e. order in **FORM GST DRC-22**), putting any requirement of issuance of order for release of the provisionally attached property in **FORM GST DRC-23** by the Commissioner may not only add to procedural requirements/ compliances but may also further delay the release of such provisionally attached property even after completion of period of one year. In view of this, it is proposed that amendment may be made in Rule 159(2) of CGST Rules, 2017 and **FORM GST DRC-22** instead, to clearly provide that order issued under **FORM GST DRC-22** shall cease to have effect after expiry of period of one year from the date of issuance.

4.1 The matter was deliberated by the Law Committee in its meeting held on 21.09.2023, wherein the Law Committee recommended amendment in sub-rule (2) of Rule 159 of CGST Rules, 2017, as mentioned below, so as to remove any doubts in the process of removing the encumbrance placed on the provisionally attached property after the expiry of the statutory period of one year from the date of

issuance of the order in the form of FORM GST DRC – 22, in accordance with the provisions of section 83(2) of CGST Act, 2017.

Rule 159. Provisional attachment of property. –

..

*(2) The Commissioner shall send a copy of the order of attachment in **FORM GST DRC-22** to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect, **or on expiry of a period of one year from the date of issuance of order in **FORM GST DRC-22**, whichever is earlier**, and a copy of such order shall also be sent to the person whose property is being attached under section 83.*

..

4.2 The Law Committee also proposed making amendment in **FORM GST DRC-22** as mentioned in **Annexure-A**.

5. The recommendations of the Law Committee as detailed in **para 4.1 and 4.2 above** are placed before the GST Council for approval.

[FORM GST DRC -22]

[See rule 159(1)]

Reference No.:

Date:

To

-----Name

-----Address

(Bank/ Post Office/Financial Institution/Immovable property registering authority/ Regional
Transport Authority/Other Relevant Authority)

Provisional attachment of property under section 83

It is to inform that M/s------(name) having principal place of business at
------(address) bearing registration number as -----(GSTIN/ID), PAN is a registered
taxable person under the <<SGST/CGST>> Act.

Or

It is to inform that Sh.....(name) resident of (address)
bearing PAN -----and/or Aadhaar No is a person specified
under sub-section (1A) of Section 122 .

Proceedings have been launched against the aforesaid person under section << >> of the said Act to
determine the tax or any other amount due from the said person. As per information available with the
department, it has come to my notice that the said person has a –

<<saving / current / FD/RD / depository >>account in your << bank/post office/financial institution>>
having account no. << A/c no. >>;

or

property located at << property ID & location>>.

or

Vehicle No. ----- <<description>>

or

Others (please specify)-----<<description>>

In order to protect the interests of revenue and in exercise of the powers conferred under section 83 of the Act, I ----- (name), ----- (designation), hereby provisionally attach the aforesaid account / property.

No debit shall be allowed to be made from the said account or any other account operated by the aforesaid person on the same PAN without the prior permission of this department.

or

The property mentioned above shall not be allowed to be disposed of without the prior permission of this department.

This order shall cease to have effect, on the date of issuance of order in FORM GST DRC-23 by the Commissioner, or on the expiry of a period of one year from the date of issuance of this order, whichever is earlier.

Signature

Name

Designation

Copy to (person)

Agenda Item 3(vi): Clarification on various issues related to Place of Supply.

A. Clarification regarding place of supply of services of transportation of goods by mail or courier when either supplier or recipient of service is located outside India

1.1 The GST Council in its 49th meeting held on February 18, 2023, vide Agenda Item 4(iii) “Change in Place of Supply of transportation of goods under Section 13(9) of the IGST Act, 2017”(Appendix X) had approved to rationalize the provisions relating to the place of supply of services of transportation of goods by deleting sub-section(9) of section 13 of the Integrated Goods and Services Tax Act, 2017 (‘IGST Act’) so as to provide that the place of supply of services of transportation of goods, in cases where location of supplier of services or location of recipient of services is outside India, shall be determined by the default route under sub-section (2) of section 13 of IGST Act, i.e. location of the recipient of services. Accordingly, sub-section (9) of section 13 of IGST Act was omitted vide section 162 of Finance Act, 2023. After the said amendment, the place of supply of services of transportation of goods will be governed by the provisions of sub-section (2) of section 13. The relevant extract of the said sub-section is reproduced below:

“(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of the services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of the services.”

1.2 Representations have been received seeking clarification regarding the place of supply in respect of transportation of goods by way of mail or courier. It has been represented that the abovementioned amendment in section 13 of IGST Act addresses only a situation where there is transportation of goods other than by way of mail or courier. It has been mentioned that the intent of the said amendment appears to rationalize the place of supply of services provisions relating to all types of transportation of goods (including mail and courier). It has been represented that many field formations are taking the view that the place of supply in case of transport of goods by mail or courier would be the location where the services are actually wholly or partly performed, because the recipient makes the goods or time-sensitive documents available to the courier agency or mail service provider in India for the transportation. As per, Section 13(3)(a) of the IGST Act, the place of supply of services in case where services are supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, would be where the services are actually performed. Further, as per section 13(6) of IGST Act, where any service referred in section 13(3) of IGST Act is supplied at more than one location, including a location in taxable territory, place of supply shall be the location in the taxable territory. This interpretation is resulting in place of supply of the services for transportation of goods by way of mail and courier in India, even if recipient of the services is located outside India.

1.3 The matter has been examined. The intent of the GST Council behind the amendment in section 13 of IGST Act was to rationalize the provision of place of supply for services of transportation of goods by deletion of sub-section (9) so as to provide that the place of supply of services of transportation of goods, in cases where location of supplier of services or location of recipient of services is outside India, shall be determined as per sub-section (2) of section 13 of IGST Act, i.e. the location of the recipient of services. It is to be noted that the nature of service, whose place of supply is in question, is transportation

of goods. It may be immaterial whether the mode of transportation is by mail or courier or any other means. In case of transportation of goods, both in cases by way of mail or courier, as well as in cases other than by way of mail or courier, the nature of supply inherently remains the same. The mode of determination of place of supply in all the cases of supply of services of transportation of goods remains the same, as there is no other specific provision in section 13 to differentiate the place of supply in case of mail or courier and other than mail or courier. Thus, it may not be legally correct to provide for different place of supply of the same service just because the mode of transportation is different. As the Council has already taken a view in 49th meeting that place of supply of services of transportation of goods, in cases where location of supplier of services or location of recipient of services is outside India, shall be determined as per sub-section (2) of section 13 of IGST Act, i.e. the location of the recipient of services, the same principle for determination of place of supply should be applicable in case of supply of transportation of goods by way of mail or courier also. Thus, the place of supply in such cases of service of transportation of goods through mail and courier is to be determined by the same provision as the service of transportation of goods other than mail and courier i.e. section 13(2) of the IGST Act.

1.4 In light of the above issue, Law Committee in its meeting held on 31.08.2023/ 01.09.2023 and 21.09.2023 recommended that a Circular may be issued to clarify that for transportation of goods, including by way of mail or courier, in all cases where location of supplier of services or location of recipient of services is outside India, the place of supply is to be determined as per sub-section (2) of section 13 of the IGST Act. This shall help in aligning the treatment for transportation of goods (other than by way of mail and courier), as intended under the GST council recommendation, with that of transportation of goods by way of mail or courier services in case where supplier or recipient is located outside India and remove any ambiguities that may arise in interpretation or otherwise.

B. Clarification regarding place of supply for services in respect of advertising sector

2.1 Reference has been received from field formations highlighting the issue of place of supply in case of advertising sector and seeking clarification on the same. As per the representation-

- (i) The advertising companies (“advertisers”) are involved in procuring space on hoardings/ bill boards erected and mounted on buildings/land, in different States, from various suppliers (“vendors”) for providing advertisement services to its corporate clients.
- (ii) The inward supply of procuring space on hoardings/billboards by the advertising companies from its vendors, is in relation to immovable property, the place of supply for such inward supply should, therefore, in the light of Section 12(3) of the IGST Act, 2017, be location at which the immovable property is located. Thus, the vendors providing such supplies to the advertising companies, which is intra-State supply as per Section 8(2) of the IGST Act, 2017, are required to pay CGST & SGST and not IGST. The advertising companies are often located and registered outside the State in which supply has been made so they cannot claim ITC of CGST & SGST.
- (iii) The advertising companies are however considering such supplies as inter-State supply under Section 12(2) of the IGST Act, 2017, on the basis of a clarification provided by the Sectoral Group for Media and Entertainment (attached as **Appendix-Y**). The vendors of advertising companies are paying IGST on such services provided to the advertising companies and ITC of such IGST is, accordingly, being availed/ utilized by the advertising company.

- (iv) Thus, it has been requested to issue a clarification on the place of supply of abovementioned services given by vendors to advertising companies.

2.2 The matter has been examined. There may be variety of arrangements between the advertising company and its vendors:

- (i) There may be a case wherein there is supply (sale) of space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. This would amount to supply of services of sale of other advertising space or time (SAC:998366). There may also be cases where there is supply (sale) of rights to use the hoarding/structure (immovable property) belonging to vendor to the advertising company. This would amount to supply by way of grant of rights to use immovable property (SAC:997212). The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. As per the definition of immovable property in Section 3(26) of the General Clauses Act, immovable property includes land, benefits to arise out of land, and things attached to earth, or permanently fastened to anything attached to the earth. Thus, the hoarding as a thing attached to the earth, falls within the definition of immovable property. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.
- (ii) There may be case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertising company at the said location. During this entire time of display of the advertisement, the advertising agency is not occupying the space or the structure but it is the vendor who is in continuous and undisturbed possession of the space. Thus, the vendor is providing advertisement services to his client (advertising agency) and it is immaterial whether it is displayed on movable or immovable property. As there is no supply (sale) of space on the hoarding/ structure (immovable property) belonging to vendor to the client for display of their advertisement on the said display board/structure, it does not amount to sale of advertising space. Also, as there is no supply (sale) of rights to use the structure (immovable property) belonging to vendor to the other person to use for any purpose, it does not amount to supply by way of grant of rights to use immovable property. Vendor is in fact providing advertisement services by providing visibility to an Advertiser's advertisement for a specific period of time on his structure which is located at a specific place. Therefore, such services provided by the Vendor to Advertiser are purely in the nature of advertisement services

in respect of which Place of Supply should be determined in terms of Section 12(2) of IGST Act, 2017 according to which place of recipient (Advertiser) is the Place of Supply and nature of transaction as to whether inter-state or intra-state shall be decided accordingly.

2.3 Accordingly, Law Committee in its meeting held on 31.08.2023/ 01.09.2023 and 21.09.2023 recommended that a Circular may be issued to clarify the issue of place of supply in the advertising sector on lines of para 2.2 above.

B. Clarification regarding place of supply for services in respect of advertising sector

3.1 Co-location is a data center facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure. A business/company who avails the co-location services primarily seek security and upkeep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers.

3.2 Representations have been received from the trade and field formations seeking clarification on certain issues with respect to determination of place of supply in case of supply of the “co-location services”. In this respect, various doubts have been raised as to whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping/storing company’s hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located or whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hour monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc.

3.3 The matter has been examined. Co-location services are in the nature of “Hosting and information technology (IT) infrastructure provisioning services” (S.No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers. In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service. However, in cases where the agreement between the supplier and the recipient is restricted to providing physical

space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.

3.4 The issue was deliberated by the Law Committee in its meeting held on 31.08.2023 and 01.09.2023, wherein the Law Committee recommended that the place of supply in case of supply of the “co-location services” may be clarified through the circular on lines of para 3.3 above.

4. The draft circular to clarify the above issues pertaining to place of supply, as recommended by the Law Committee, is attached as **Annexure-A**.

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

F. No. CBIC-XX/XX/XXXX-GST

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Indirect Taxes & Customs,

GST Policy Wing

New Delhi, dated the XX, 2023

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /

Commissioners of Central Tax and Central Tax (Audit) (All)

The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Clarification regarding determination of place of supply in various cases-reg.

Representations have been received from the trade and field formations seeking clarification on certain issues with respect to determination of place of supply in case of –

- i. supply of service of transportation of goods, including through mail and courier;
- ii. supply of services in respect of advertising sector; and
- iii. supply of the “co-location services”.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

S.No.	Issue	Clarification
A. Place of supply in case of supply of service of transportation of goods, including through mail and courier		
1.	Sub-section (9) of section 13 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”) has been omitted vide section 162 of Finance	1.1 Place of supply of services where location of supplier or location of recipient is outside India is determined as per section 13 of the IGST Act. Sub-section (9) of

	<p>Act, 2023 which will come into effect from 01.10.2023. After the said amendment, doubts have raised as to whether the place of supply in case of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per sub-section (2) of section 13 of IGST Act or will be determined as per sub-section (3) of section 13 of IGST Act.</p>	<p>section 13 of IGST Act provided that where one of the supplier of the services or the recipient of services is located outside India, the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods. The said sub-section has been omitted vide section 162 of Finance Act, 2023 which will come into effect from 01.10.2023. It is hereby clarified that after the said amendment comes into effect, the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of IGST Act and not as performance based services under sub-section (3) of section 13 of IGST Act. Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.</p> <p>1.2 Further, it is also mentioned that the place of supply in case of service of transportation of goods by mail or courier was not covered under the provisions of sub-section (9) of section 13 before the said sub-section was amended/omitted. Therefore, on the same principles as mentioned above, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act i.e. in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business,</p>
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		the place of supply shall be the location of supplier of services.
B. Place of supply in case of supply of services in respect of advertising sector		
2.	<p>Advertising companies are often involved in procuring space on hoardings/ bill boards erected and mounted on buildings/land, in different States, from various suppliers (“vendors”) for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:</p> <p>(i) There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?</p> <p>(ii) There may be another case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure.</p>	<p>2.1 It is clarified that the place of supply in the case supply of services in respect of advertising sector, in the cases referred in (i) and (ii), shall be determined as below:</p> <p>2.2 Place of supply in Case (i): The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.</p> <p>2.3 Place of supply in Case (ii): In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their</p>

	<p>In this case, what will be the place of supply of such services provided by the vendor to the advertising company?</p>	<p>advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.</p>
C. Place of supply in case of supply of the “co-location services”		
3.	<p>Co-location is a data center facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.</p> <p>A business/company who avails the co-location services primarily seek security and upkeep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers.</p> <p>In this respect, various doubts have been raised as to</p> <ol style="list-style-type: none"> whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping/storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub- 	<p>3.1 It is clarified that the Co-location services are in the nature of “Hosting and information technology (IT) infrastructure provisioning services” (S.No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.</p>

	<p>section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or</p> <p>whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc.</p>	<p>3.2 In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service.</p> <p>3.3 However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.</p>
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3. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)

Principal Commissioner (GST)

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

References have been received from trade and industry associations requesting for clarification regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services as export of services as per provisions of clause (6) of section 2 of IGST Act, 2017. They have further stated that Export remittances realized in INR into Special Vostro accounts are being denied by some of the tax authorities by taking a view that the remittances received by taxpayer in 'INR' in such Vostro accounts are not permitted by RBI. In view of this, refunds of ITC are being denied to the exporters by such tax authorities claiming that the said exporter has not realized export proceeds in convertible foreign exchange and accordingly, the conditions for qualifying as export under clause (6) of section 2 of IGST Act, 2017 are not fulfilled. Requests have been made for issuance of a circular to clarify this issue.

2. The matter has been examined in light of extant GST provisions, RBI Circulars and Foreign Trade Policy, 2023, and is discussed in the following paras.

3. Export of services has been defined under clause (6) of section 2 of IGST Act, 2017. As per the said definition, any supply of services needs to fulfill five conditions for it to qualify as export of services. Clause (6) of section 2 of the IGST Act 2017 is reproduced below for reference:

“(6) “export of services” means the supply of any service when, –

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

*(iv) **the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India;** and*

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;”

3.1 One of the conditions mentioned in sub-clause (iv) of Section 2(6) of the IGST Act, 2017 is that the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.

4. Reference is invited to RBI's ***A.P. (DIR Series) Circular No.10 dated 11th July, 2022 regarding International Trade Settlement in Indian Rupees (INR)***, wherein it has been clarified that to promote growth of global trade with emphasis on exports from India and to support the increasing interest of global trading community in INR, it has been decided to put in place an **additional arrangement for invoicing, payment, and settlement of exports / imports in INR**. Before putting in place this mechanism, AD banks shall also require prior approval from the Foreign Exchange Department of Reserve Bank of India, Central Office at Mumbai. Para 3 of the Circular is reproduced below:

“3. In terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, AD banks in India have been permitted to open Rupee Vostro Accounts. Accordingly, for settlement of trade transactions with any country, AD bank in India may open Special Rupee

Vostro Accounts of correspondent bank/s of the partner trading country. In order to allow settlement of international trade transactions through this arrangement, it has been decided that:

(a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.

(b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.”

4.1 This essentially implies that RBI has put in place an additional arrangement for invoicing, payment, and settlement of exports / imports in INR through Special Rupee Vostro Accounts opened by Authorised Dealer Banks of correspondent bank(s) of the partner trading country, subject to conditions stipulated under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016 for opening of such accounts.

5. Reference is further invited to the Foreign Trade Policy (FTP) 2023, which has come into force from 01.04.2023, wherein Para 2.52 (d) of chapter relating to General Provisions Regarding Imports and Exports specifies that:

Para 2.52 (d) Invoicing, payment and settlement of exports and imports is also permissible in INR subject to compliances as under RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022. Accordingly, settlement of trade transactions in INR shall take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, in accordance to the following procedures:

(i) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier

(ii) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

5.1 Thus, the relevant provisions of the Foreign Trade Policy (FTP) 2023 also reiterate that export of services can take place through the mechanism put in place regarding Special Rupee Vostro Account subject to compliances mandated under RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022.

6. In view of the above, on perusal of the aforesaid provisions of RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 & Para 2.52 (d) of the Foreign Trade Policy (FTP) 2023, it appears that the conditions of sub-clause (iv) of Section 2(6) of the IGST Act, 2017, which requires that for a supply of service to qualify as export of service, the payment for such service should be received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, appear to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange

Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023.

7. Law Committee deliberated on the issue in its meeting held on 31.08.2023 and 01.09.2023 and recommended that the issue may be clarified through a circular as above.

8. The draft circular, as recommended by the Law Committee, incorporating the clarification is enclosed at **Annexure-A** to this agenda note.

9. The agenda is placed before the GST Council for deliberation and approval.

CIRCULAR NO. XXX/XX/2023-GST

CBIC-20016/20/2023-GST-SECTION-CBEC

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

New Delhi, the , 2023

To

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

Madam / Sir,

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

Various representations have been received requesting for clarification regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services as per the provisions of clause (6) of section 2 of the Integrated Goods & Services Tax Act, 2017 (herein after referred to as the ‘IGST Act’).

2. The 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 Central Goods & Services Tax Act, 2017 (herein after referred to as the ‘CGST Act’), hereby clarifies the issue as under:

3. Relevant legal provisions:

3.1 Export of services has been defined under clause (6) of section 2 of IGST Act. As per the said definition, any supply of services needs to fulfill five conditions for it to qualify as export of services. Clause (6) of section 2 of the IGST Act is reproduced below for reference:

“(6) “export of services” means the supply of any service when, –

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) **the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and**
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;”

3.2 One of the conditions mentioned in sub-clause (iv) of Section 2(6) of the IGST Act is that the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.

3.3 Reference is invited to RBI's ***A.P. (DIR Series) Circular No.10 dated 11th July, 2022 regarding International Trade Settlement in Indian Rupees (INR)***, vide which it has been clarified that to promote growth of global trade with emphasis on exports from India and to support the increasing interest of global trading community in INR, it has been decided to put in place an **additional arrangement for invoicing, payment, and settlement of exports / imports in INR**. Before putting in place this mechanism, AD banks shall require prior approval from the Foreign Exchange Department of Reserve Bank of India, Central Office at Mumbai. Para 3 of the Circular is reproduced below:

“3. In terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, AD banks in India have been permitted to open Rupee Vostro Accounts. Accordingly, for settlement of trade transactions with any country, AD bank in India may open Special Rupee Vostro Accounts of correspondent bank/s of the partner trading country. In order to allow settlement of international trade transactions through this arrangement, it has been decided that:

(a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.

(b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.”

3.4 Reference is also invited to Para 2.52 (d) of chapter related to General Provisions Regarding Imports and Exports of the Foreign Trade Policy (FTP) 2023, which has come into force from 01.04.2023, which specifies that:

Para 2.52 (d) Invoicing, payment and settlement of exports and imports is also permissible in INR subject to compliances as under RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022. Accordingly, settlement of trade transactions in INR shall take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, in accordance to the following procedures:

(i) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier

(ii) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

3.5 On perusal of the above, it can be stated that the condition(s) of sub-clause (iv) of Section 2(6) of the IGST Act, 2017, can be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023.

4. Therefore, it is clarified that when the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by AD banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars and without prejudice to the permissions / approvals, if any, required under any other law .

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner

Agenda Item 3(viii): Amendment in Central Goods and Services Tax Rules, 2017 and GST REG/PCT – FORM(s)

A. Incorporation of ‘One Person Company’ in FORM GST REG 01 i.e. Application for Registration

1.1 While applying for Registration, an applicant is required to select ‘Constitution of Business’ from dropdown in Part B of FORM GST REG-01 i.e. Application for Registration. Following are the categories for ‘Constitution of Business’ in the dropdown of Part B of FORM GST REG-01.

- (i) Proprietorship
- (ii) Partnership
- (iii) Hindu Undivided Family
- (iv) Private Limited Company
- (v) Public Limited Company
- (vi) Society/Club/Trust/Association of Persons
- (vii) Government Department
- (viii) Public Sector Undertaking
- (ix) Unlimited Company
- (x) Limited Liability Partnership
- (xi) Local Authority
- (xii) Statutory Body
- (xiii) Foreign Limited liability Partnership
- (xiv) Foreign Company Registered (In India)
- (xv) Others

In case, the business does not fall in any of the specified categories of ‘Constitution of Business’ then applicant may choose ‘others’ as the category.

1.2 After selecting constitution of business, in the existing system, applicant has to add at least one partner/promoter (Primary Authorised Signatory) in tab of business category. Recently, a change has been introduced in the system, whereby it has been made mandatory for applicant to update minimum two Partners/Promoters, if he selects either of the following categories of “Constitution of Business”:

- (i) Foreign Company
- (ii) Foreign Limited liability Partnership
- (iii) Limited Liability Partnership
- (iv) Partnership

- (v) Private Limited Company
- (vi) Public Limited Company
- (vii) Public Sector Undertaking
- (viii) Society/Club/Trust/Association of Persons
- (ix) Unlimited Company

With this new change in portal, in case an applicant tries to proceed with less than two Promoters and Partners, an error message is being displayed on the portal and he is not able to submit the application for registration.

2.1 It is mentioned that, concept of 'One Person Company' has been inserted in the Companies Act, 2013 with effect from 01.04.2014 and as per provision of section 2(62) of the Companies Act, 2013, it has been defined as a company which has only one person as member.

2.2 However, after the implementation of the change on the portal referred in Para 1.2 above, it has been found that, since option of 'One Person Company' has not been provided in the dropdown, therefore, such applicants have been trying to register as 'Private Limited Company'. Thus, they are facing problem to go further in registration process by selecting this option as it is one person company and not required to fill details of two promoter/partners.

2.3 At present, the option of choosing 'One Person Company' is not available among different categories of 'Constitution of Business' in notified FORM REG-01 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'CGST Rules') and hence not available on GST portal as well. As of now, to handle this issue presently, an advisory has been issued by GSTN in this regard for One Person Company applicants wherein it has been advised to select 'Others' in 'Constitution of Business' and then specify 'One Person Company' in text field to complete the registration process.

2.4 It is proposed to make available on portal in the "Constitution of Business" tab, option of "One Person Company", so that one can apply as "One Person Company". With this option, the system will allow the applicant to fill only the details of the single member or owner and to submit the application successfully on system.

3. The Law Committee in its meeting held on 31.08.2023 and 01.09.2023 deliberated on the matter and recommended to incorporate 'One Person Company' as a Constitution of Business in Part-B of FORM GST REG 01.

B. Application for Enrolment as Goods and Services Tax Practitioner-Amendment in Form GST PCT-01.

4.1 Rule 83(1) of the CGST Rules stipulates the following conditions for enrolment as Goods and Services Tax practitioner by any person:

(a) that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Indirect Taxes and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower than the rank of a Group-B gazetted officer for a period of not less than two years; or

(b) that he has enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years;

(c) he has passed,

(i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or

(ii) a degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or

(iii) any other examination notified by the Government, on the recommendation of the Council, for this purpose; or

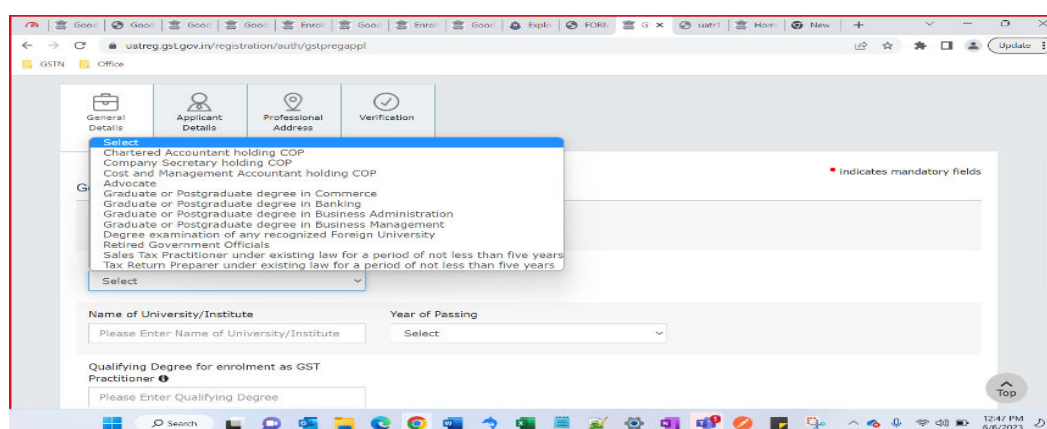
(iv) has passed any of the following examinations, namely:-

(a) final examination of the Institute of Chartered Accountants of India; or

(b) final examination of the Institute of Cost Accountants of India; or

(c) final examination of the Institute of Company Secretaries of India.

4.2 Presently, the following options are available on the portal for selection:-



4.3 Necessary changes are required to be made on the portal as well as in **Part-B of Form GST PCT-01** in line with the rules as below:

- a. COP is not required for CA/ICWA/CS as per the rules.
 - b. Option related to Graduate or Post Graduate in Law and Higher Auditing is not available in notified form and the portal and needs to be inserted.
 - c. Option related to any other examination notified by Government is also not available in notified form and the portal and needs to be inserted.
 - d. Deleting the option of “Advocate” as it is not aligned with the existing rules.
5. Accordingly, the Law Committee in its meeting held on 31.08.2023 and 01.09.2023 recommended to amend the S. No. 4 of **Part-B** of **Form GST PCT-01** as below:

4	<p>Enrolment sought as:</p> <p>[Note: Sr. No. (4) to (8) against row no 4 of the above table should be from any Indian University established by any law for the time being in force.]</p>	<p>(1) Chartered Accountant holding COP</p> <p>(2) Company Secretary holding COP</p> <p>(3) Cost and Management Accountant holding COP</p> <p>(4) Advocate Graduate or Postgraduate or its equivalent degree in Law</p> <p>(5) Graduate or Postgraduate or its equivalent degree in Commerce</p> <p>(6) Graduate or Postgraduate or its equivalent degree in Banking including Higher Auditing</p> <p>(7) Graduate or Postgraduate or its equivalent degree in Business Administration</p> <p>(8) Graduate or Postgraduate or its equivalent degree in Business Management</p> <p>(9) Degree examination of any recognized Foreign University recognized by any Indian University</p> <p>(10) Retired Government Officials</p> <p>(11) Sales Tax practitioner under existing law for a period of not less than five years</p> <p>(12) Tax return preparer under existing law for a period of not less than five years</p> <p>(13) Any other examination notified by Government</p>
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C. Application for cancellation of TCS and TDS registration- Enhancement in Form GST REG-08 format for having options for cancellation of registration against the request made by the TDS and TCS registered persons.

6.1 As per the notification no. 26/2022-CT dated 26.12.2022, rule 12(3) of the CGST Rules has been amended as follows:

*(3) Where, on a request made in writing by a person to whom a registration has been granted under sub-rule (2) or upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in **FORM GST REG-06** has been issued is no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in **FORM GST REG-08**:*

Provided that the proper officer shall follow the procedure as provided in [rule 22](#) for the cancellation of registration.

6.2 Presently, the tax officers are issuing Order of cancellation of Registration as Tax Deductor at Source or Tax Collector at Source in FORM GST REG-08 for suo-moto cancellation of registration alone and there is no separate format for issuing order of cancellation of registration for those persons against self-cancellation application.

7. As per the above said amendment, upon receipt of request made by TDS/TCS taxpayers through e-mail or a letter (manual submission), the tax officers would accept the request and pass the cancellation of registration order in **FORM GST REG-08**. In cases, where, the tax officer is not satisfied with the request made by such taxpayers, he can convey the queries through email wherein he can attach the document for seeking clarifications. In accordance with response submitted through email by taxpayer, tax officer can take final decision for granting cancellation in REG-08 form and rejection can be informed through email. However, there is a need to amend **FORM GST REG-08** to specifically provide for cancellation of registration of TCS/ TDS taxpayers on their request.

8. Further, a need is felt to rephrase and re-align the reasons for cancellation in **FORM GST REG-08** on the lines of those notified in respect of FORM GST REG-19 vide CGST (5th Amendment) Rules, 2022 for better clarity.

9. Accordingly, the Law Committee in its meeting held on 31.08.2023 and 01.09.2023 recommended to substitute **FORM GST REG-08** as follows:

FORM GST REG-08

[See rule 12(3)]

Reference No

Date:

To

Name:

Address:

Application Reference No. (ARN)

Date:

Order of Cancellation of Registration as Tax Deductor at source or Tax Collector at source

This is in reference to the request raised vide letter/mail dated for cancellation of registration under the Act due to following reason:

i.

ii.

The undersigned is of opinion that the effective date of cancellation of registration is <<DD/MM/YYYY>>.

2. You are required to furnish pending returns immediately.
3. Kindly refer to the supportive document(s) attached for case specific details.
4. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

OR

Order of Cancellation of Registration as Tax Deductor at source or Tax Collector at source

This has reference to the show-cause notice issued dated.....

☐ Whereas no reply to the show cause notice has been submitted.
and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s) : or

☐ Whereas reply to the show cause notice has been submitted vide dated_____.

and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s) : or

- ☐ Whereas no reply to the show cause notice has been submitted and on day fixed for personal hearing, you did not appear in person or through authorised representative.
and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s) : or
- ☐ Whereas no reply to the show cause notice has been submitted, but you or authorised representative attended the personal hearing and made a written or verbal submission.
and whereas, the undersigned on examination of your written or verbal submission made during personal hearing and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s) : or
- ☐ Whereas reply to the show cause notice has been submitted vide dated _____. But, you or authorised representative did not attend the personal hearing on scheduled or extended date.
and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s) : or
- ☐ Whereas reply to the show cause notice has been submitted vide dated _____ and you or authorised representative attended the personal hearing, made a written/oral submission during personal hearing. And whereas, the undersigned has examined your reply to show cause notice as well as submissions made at the time of personal hearing and is of the opinion that your registration is liable to be cancelled for following reason(s) :

- i.
- ii.

The effective date of cancellation of registration is <<DD/MM/YYYY >>.

- 2. Kindly refer to the supportive document(s) attached for case specific details.
- 3. You are required to furnish pending returns immediately.
- 4. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

Place:

Date:

Signature
Name of the Officer
Designation
Jurisdiction

D. Amendment in rule 142 (3) of the CGST Rules with respect to FORM GST DRC-05.

10.1 After issuance of SCN and its summary in FORM GST DRC-01, if tax payer accepts the dues communicated, then he intimates the proper officer of such payment in FORM GST DRC-03. Then the proper officer communicates in FORM GST DRC-05 regarding conclusion of the proceedings in respect of the said notice. FORM GST DRC-03 is voluntary payment and officer issues FORM GST DRC-05 to communicate to the taxpayer that, as he has paid the dues voluntarily, proceedings initiated vide SCN in FORM DRC-01 is hereby concluded.

10.2 In this regard, it is to be noted that prescribed FORM GST DRC-05 uses the word intimation. However, rule 142 (3) of the CGST Rules states that “*Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3)], he shall **intimate** the proper officer of such payment in **FORM GST DRC-03** and the **proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.***” i.e. the word used in rule 142(3) is 'order' and not 'intimation'.

10.3 It is also to be mentioned that section 107 of Central Goods and Service Tax Act, 2017 (hereinafter referred to as ‘CGST Act’) states that “*Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*” Therefore, as per the wordings of rule 142 (3) of the CGST Rules, DRC-05 is an order and any decision or order is appealable under section 107 of the CGST Act.

10.4 In order to remove this anomaly between rule 142(3) and FORM GST DRC-05, it is proposed that rule 142 (3) may be amended so that words “**intimation**” shall be used instead of “**order**” with respect to FORM GST DRC-05.

10.5 Accordingly, the Law Committee in its meeting held on 31.08.2023 and 01.09.2023 recommended to amend rule 142(3) of the CGST Rules as follows:

“Rule 142- Notice and order for demand of amounts payable under the Act

*(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3)], he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an ~~order~~ **intimation** in **FORM GST DRC-05** concluding the proceedings in respect of the said notice. ”.*

E. Changes in FORM GSTR-8 to include late fee

11.1 Section 47 of the CGST Act has been inter alia amended vide Finance Act, 2022 and the said amendment has been notified w.e.f. 01.10.2022 vide Notification No. 18/2022-Central Tax dated 28.09.2022. The amended Section 47 of the CGST Act, accordingly, reads as under:

Section 47. Levy of late fee. -

(1) Any registered person who fails to furnish the details of outward supplies required under section 37 or returns required under section 39 or section 45 or section 52 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

11.2. The above amendment envisages that the late fee on delayed furnishing of return in FORM GSTR-8 under section 52 of the CGST Act, 2017 by e-commerce operators, should also be levied from the date of implementation of the aforesaid amendment. Since, existing FORM GSTR-8 does not contain late fee table, GSTN proposed certain changes in FORM GSTR-8.

11.3. The Law Committee recommended the said changes in FORM GSTR-8 as below:

[See rule 67(1)]

Year				
Month				

[illegible]

(Amount in Rs. for all Tables)

GSTIN of the supplier	Details of supplies made which attract TCS			Amount of tax collected at source		
	Gross value of supplies made	Value of supplies returned	Net amount liable for TCS	Integrated Tax	Central Tax	State /UT Tax
1	2	3	4	5	6	7
3A. Supplies made to registered persons						
3B. Supplies made to unregistered persons						

Original details		Revised details						
Month	GSTIN of supplier	GSTIN of supplier	Details of supplies made which attract TCS			Amount of tax collected at source		
			Gross value of supplies made	Value of supply returned	Net amount liable for TCS	Integrated Tax	Central Tax	State/UT Tax
1	2	3	4	5	6	7	8	9

4A. Supplies made to registered persons								
4B. Supplies made to unregistered persons								

5. Details of interest				
On account of	Amount in default	Amount of interest		
		Integrated Tax	Central Tax	State /UT Tax
1	2	3	4	5
Late payment of TCS amount				

6. Tax payable and paid

Description	Tax payable	Amount paid
1	2	3
(a)Integrated Tax		
(b)Central Tax		
(c)State / UT Tax		

7. Interest payable and paid

Description	Amount of interest payable	Amount paid
1	2	3
(a)Integrated tax		
(b)Central Tax		

(c) State/UT Tax		
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7. Interest, late fee payable and paid

Description	Amount payable	Amount paid
1	2	3
(I) Interest on account of TCS in respect of		
(a) Integrated tax		
(b) Central Tax		
(c) State/UT Tax		
(II) Late fee		
(a) Central tax		
(b) State / UT tax		

8. Refund claimed from electronic cash ledger

Description	Tax	Interest	Penalty	Other	Debit Entry Nos.
1	2	3	4	5	6
(a) Integrated tax					
(b) Central Tax					
(c) State/UT Tax					
Bank Account Details (Drop Down)					

9. Debit entries in cash ledger for TCS, ~~interest and late fee~~ payment [to be populated after ~~payment of tax and filing of statement submissions of return~~]

Description	Tax paid in cash	Interest	Late fee
1	2	3	4

(a) Integrated tax			
(b) Central Tax			
(c) State/UT Tax			

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 of Authorised Signatory

Place:

Name of Authorised Signatory

Date:

Designation /Status

Instructions:-

1. Terms Used:-

(a) GSTIN:- Goods and Services Tax Identification Number

(b) TCS:- Tax Collected at source

2. An e-commerce operator can file GSTR- 8 only when full TCS liability has been discharged.

3. TCS liability will be calculated on the basis of table 3 and table 4.

4. Refund from electronic cash ledger can only be claimed only when all the TCS liability for that tax period has been discharged.

5. Cash ledger will be debited for the refund claimed from the said ledger.

6. Amount of tax collected at source will flow to Part C of GSTR- 2A of the taxpayer on filing of GSTR-8.

7. Matching of Details with supplier's GSTR-1 will be at the level of GSTIN of supplier.

12. Accordingly, The agenda is placed before the Council for approval.

Agenda Item 3(ix): Subject: Clarification on the scope of the refund on account of inverted duty structure in respect of supplies of certain construction services.

References have been received from field formations requesting for clarification regarding applicability of Notification number 15/2017-Central Tax (Rate), dated 28.06.2017 in respect of applications for refund on account of inverted duty structure in the case of supply of certain services like construction of bridges and roads etc. It has been mentioned that some of the field formations are taking a view that roads, bridges are “civil structures” and the construction of such civil structures would amount to a service which has been specified in Item 5(b) of Schedule II of the CGST Act, 2017. It has also been mentioned that refund of accumulated credit on account of inverted duty structure in the case of supply of services specified in Item 5(b) of Schedule II of the CGST Act, 2017 is restricted by virtue of Notification number 15/2017-Central Tax (Rate), dated 28.06.2017 and accordingly, refund of accumulated credit on account of inverted duty structure shall not be available in respect of construction of civil structures like bridges, roads, etc. Per contra, it has also been mentioned that some other field formations are taking a view that the activity of construction of roads, bridges is not covered under Item 5(b) of Schedule II of the CGST Act, 2017 but instead falls under the works contract service under Item 6(a) of the Schedule II of the CGST Act, 2017 and accordingly, there is no restriction on refund of accumulated credit on account of inverted duty structure in the case of supply of such services under Notification number 15/2017-Central Tax (Rate), dated 28.06.2017.

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.”

2.1 On perusal of the above, it can be stated that the Government can restrict refund of accumulated input tax credit in case of certain supplies of goods and by way of issuance of a Notification on the recommendations of the GST Council. .

2.2 Under these powers, Government, on the recommendations of GST Council, issued Notification no. 15/2017-Central Tax (Rate), dated 28.06.2017, whereby refund of unutilized input tax credit was restricted in respect of supplies specified in Item 5(b) of Schedule II of the Act, which inter alia reads as under:

*“In exercise of the powers conferred by sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council hereby notifies that **no refund of unutilised input tax credit shall be allowed under sub-section (3) of section 54 of the said Central Goods and Services Tax Act, in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the Central Goods and Services Tax Act.**”*

2.3 Item 5(b) of Schedule II is reproduced below:

5. Supply of services: The following shall be treated as supply of services, namely:-

(a) renting of immovable property;

*(b) **construction of a complex, building, civil structure or a part thereof**, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*

2.4 In this regard, reference is also drawn to Item 6(a) of Schedule II of CGST Act as well as clause (119) of Section 2 of CGST Act which are reproduced below:

Schedule II: ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

6. Composite supply: The following composite supplies shall be treated as a supply of services, namely:-

(a) works contract as defined in clause (119) of section 2;

...

Further, Clause (119) of Section 2 of CGST Act:

“(119) “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;”

2.5 On perusal of the abovesaid provisions, it can be inferred that refund of unutilised input tax credit shall not be available in case of supply of services covered under Item 5(b) of Schedule II of CGST Act. Therefore, to decide as to whether refund on account of inverted duty structure in the case of supply of certain construction services like construction of bridges and roads etc is admissible or not, it needs to be determined whether the supply of services of construction of bridges or roads can be considered as construction of civil structures specified in Item 5(b) of Schedule II of the CGST Act, 2017 or on the contrary, such services are a works contract services falling under the Item 6(a) of Schedule II of the CGST Act, 2017 and not covered under Item 5(b) of Schedule II of the CGST Act, 2017 .

3. In this regard, it is observed that Entry 5(b) and Entry 6(a) of Schedule II both relate to construction services, yet the notification denying refund has been limited to activities specified in entry 5(b) and does not extend to Entry 6(a). From this, it prima facie appears that the Entry 5(b) of Schedule II of the Act is a sub-set of Entry 6(a) of the said Schedule. This is significant in view of the fact that “real estate” services have been kept out of GST except to the extent of construction services involved and this appears to be the reason for creating two different entries in the same Schedule for an activity which has a predominantly uniform nature viz. construction services. Also, Entry 5(b) appears to cover only those work contract services for construction of building, complexes, structures, etc. where the said building, complexes, civil structures, are intended for sale to a buyer.

3.1 In this context, it is relevant to appreciate that the debate surrounding refund of accumulated input tax credit in this matter hinges upon whether the service under consideration is covered by Entry 5(b) or Entry 6(a) of Schedule II of the CGST Act, 2017. Entry 5 of Schedule III of the Act which has been considered as neither a supply of goods nor a supply of services for the purposes of the Act reads as under:

“5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

3.2 Sale of building and sale of land (other than services in connection with land, as specified in Entry 5(b) of Schedule II) have been deemed to be “no-supplies” for the purpose of GST and are, accordingly, not leviable to tax under the CGST Act, 2017. The Entry 5(b) of Schedule II appears to be an entry relating to real-estate as manifested in immovable property like a completed building or apartment which involves an element of land or undivided share in land, and is also intended for sale to a buyer. This interpretation appears to be coherent with the purpose for which refund of unutilised input tax credit is restricted only to Entry 5(b) because if the intention had been to bar refund of unutilised input tax credit in respect of all the construction services involving works contract, then it would have been explicitly stated that no such refund of unutilised input tax credit would be available in respect of construction services involving works contract and the relevant portion of the Notification no. 15/2017-Central Tax (Rate) dated 28th June, 2017 would have read:

“.....no refund of unutilised input tax credit shall be allowed under sub-section (3) of section 54 of the said Central Goods and Services Tax Act, in case of supply of construction services involving works contract. ~~specified in sub-item (b) of item 5 of Schedule II.~~”

3.3 It therefore appears that a “civil structure” like construction of a bridge, road, which are not intended for sale to a buyer, may appropriately be classifiable in Entry 6(a) of Schedule II of the CGST Act, 2017 i.e. under works contract services, on which refund of unutilised input tax credit is not restricted.

4. Attention is also invited to the discussions held in GST Council in its 15th meeting held on 03.06.2017 & 20th meeting held on 05.08.2017, as per which it appears that the restriction imposed on refund in respect of Entry 5 (b) in Schedule II is regarding services which are related to “real estate” services, which are intended for sale to buyers and also involve sale of land as part of consideration. The relevant extracts of Agenda Note approved by GST Council is as follows:

4.1 Relevant excerpt of Final Agenda Note of 15th GST Council meeting is as follows:

24.2. The Secretary stated that in the construction sector, works contracts have been deemed as service and GST would be applicable for supply of work contract services before completion of construction of a building but there would be no GST on the sale of a ready built building or flat. He stated that as per the decision of the Supreme Court, no tax could be charged on the value of land, and therefore, **the Fitment Committee recommended that in a supply of works contract service where the value of land was included in the amount charged from the service recipient** (along with the value of building materials and the services given by the contractor), one-third of the total consideration amount could be taken as the value of land for abatement purpose. He stated that **full ITC on works contract would encourage purchase of building materials from registered suppliers but no refund of input tax credit overflow would be permitted**. He stated that presently the approximate combined incidence of tax was around 9% -10% but the headline rate of tax would now become 12% with the benefit of ITC. **He added that the overflow of input tax credit in this sector would not be refunded**. He stated that building materials would be mostly in the rate slab of 12% and due to benefit of ITC, the prices of flats should become cheaper.

4.1.1 From the above, it is deduced that the intention of GST Council was to place restriction on refund of unutilised input tax credit in case of supply of such works contract services where the value of land was included in the amount charged from service recipient.

4.2 The issue was further discussed in 20th GST Council meeting held on 5th August, 2017 wherein it was mentioned in Agenda Item 7 (iv) that

4. *Works contract, not exempt in the service tax era, was subjected to service tax on abated value. Therefore, the effective service tax on works contract was 6% without ITC of input goods. Thus, the cumulative incidence of service tax, Central Excise & VAT on input goods, and VAT @composition scheme was about 24-25% (without factoring in CST and entry tax). Therefore, works contract provided to government, even though exempt from service tax (only the service portion) suffered taxes of about 19-20%.*

5. *In view of the above and the fact that the goods part of works contract was taxable by the States in the pre-GST era and that it would be difficult to segregate the service part from the composite contract of works contract service (& prone to mis-use), it was recommended by the Fitment Committee not to carry forward these exemptions in the GST era. Also, exempting the service part of works contract service does not also make sense when full ITC of input goods, capital goods and input services is available. Exempting the service part would require reversals of ITC with all its attendant disputes. Then, there is a view that full ITC of capital goods should not be allowed when only part of the output is taxed. So, this would again entail complications. Finally, the gains from GST lie in completion of ITC chain which incentivizes dealers to procure duty-paid raw materials and dis-incentivises procurement of duty evaded/avoided raw materials. This is precisely the self-policing mechanism of GST. It is for these reasons that the GST Council accepted the recommendations of the Fitment Committee to not carry forward such exemptions under GST. **As a result, Works Contract service attracts GST @ 18% with full ITC and no restriction on refund of accumulated credit.** Ultimately, it is the completion of the ITC chain in respect of works contract (particularly government contracts) which will effectively achieve what demonetization sought to achieve.*

4.2.1 In this context, it is also relevant to mention that earlier in the Service Tax regime, the exemption provided to service component of works contract service was in the nature of Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public.

4.2.2 From the discussions above, it thus becomes clear that the exemption on works contract was not carried forward in GST regime so as to ensure completion of ITC chain, which as a consequence, also requires that there will be no restriction on refund of accumulated credit in case of works contract services provided to the Government. And moreover, in the exemption list earlier, the construction of road, bridge etc. was specifically mentioned, thus there is reasonable basis to conclude that the construction of road, bridge shall fall under Entry 6(a) instead of Entry 5 (b) of Schedule II of CGST Act.

4.3 Further, in Agenda item 7(i) of 22nd GST Council Meeting held on 06.10.2017, it was mentioned that “In the initial meetings of Fitment Committee, it was decided to withdraw this service tax exemption because it was felt that it was not possible to segregate the value of services from goods and also because States levied VAT on the goods portion. Works contract was subject to both service tax and VAT in the pre-GST regime as permitted by Article 366 (29A) (b) of the Constitution. However, under the GST regime, works contract has been treated as a supply of service under Schedule II of the GST Act (Para 6(a)).” In the agenda, it has also been specifically mentioned that works contract provided to Government which were earlier exempted now fall under Para 6 (a) of Schedule II of the CGST Act.

4.3.1 Paras 5 & 7 of the Agenda item *ibid* also mentions that

5. *As far as other categories of works contract are concerned, for instance, irrigation and CAD (dams and barrages), Drinking Water Supply Scheme/ Mission etc. the effective GST rate appears to be less than the pre GST rate. In fact, in the following category of works, 12% GST rate may lead to a situation to give refunds: -*

a) Roads and Buildings

b) Road Renewals

c) Bridge Works

7. *Analysis of the data submitted by the Government of Telangana reveals that even in canal works, incidence of tax in the GST regime is less than what it was in the pre GST regime and in the case of roads and buildings, bridge works even the 12% GST rate would merit refund. (Calculation sheet is circulated separately).*

5. From the agenda items discussed in various GST Council meetings mentioned above, it appears that refund of unutilised input tax credit is not restricted in case of supplies of works contract services relating to construction of roads and bridges etc. falling under Item 6(a) of Schedule II of CGST Act, 2017, which are not intended for sale to buyers and where value of supply of services does not include value of the land.

6.1 Law Committee (LC) deliberated on the issue in its meeting held on 31.08.2023 and 01.09.2023 and all the members of LC, other than the member from State of Karnataka, were of the view that construction of only such civil structures including a complex or building, which are intended for sale to a buyer along with land or undivided share of land are covered under entry 5 (b) in Schedule II of CGST Act and are, therefore, covered under the restriction on refund of accumulated ITC on account of inverted duty structure as per Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017, whereas the construction of civil structures, like bridges, roads, etc. which are not intended for sale to a buyer, are not covered under the restriction for grant of refund of inverted duty structure under Section 54(3) as per Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017.

6.2 The LC member from Karnataka, however, opined that construction of all kinds of civil structures, including bridges, falls under Entry 5(b) of Schedule II of CGST Act, 2017 and hence no refund of inverted duty structure under Section 54(3) should be granted in such cases as per Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017.

7. The Agenda is placed before the GST Council for deliberation.

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 stake holders 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 25.08.2023, 05.09.2023 12.09.2023 & 26.09.2023 and had detailed discussions on recommendations received from various stakes holders seeking changes in GST/IGST rates or seeking clarification on supply of goods/services. After examination, the Fitment Committee has recommended changes in GST rates or issue of clarification, in relation to certain goods and services. Further, the Fitment Committee has recommended no change in respect of certain issues. On some 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 summarised as below:

a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarification 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

S. No.	Description of Goods /HSN	Present GST Rate	Requested GST Rate	Comments
1	Food preparation of millet flour in powder form, containing at least 70% millets	18%	Exemption	<ul style="list-style-type: none"> In the 49th & 50th GST Council Meetings, Council deferred the proposal for further examination The product under consideration is food preparation of flour of millets When millets undergo multiple stages of preparation including washing, roasting, grinding, addition of additives and other substances such as pulses, further processing and packaging for use as food preparations, the final products are food preparations of flour. 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. Since 2023 is being celebrated as Year of the Millets in 2023, to promote millet-based products, Fitment Committee recommended the following rates: <i>0%- food preparation of millet flour, in powder form, containing at least 70% millets by weight (CTH 1901), sold in other than pre-packaged and labelled form</i> <i>12%- if sold in pre-packaged and labelled form.</i> Further, considering that there was no ambiguity or confusion in trade regarding prepared flour preparations in the past, Fitment Committee recommended that there is no merit in regularising the issue for past period.
2	Gold and Silver imported by Karur Vysya Bank (Chapter 71)	IGST 3% (On Import)	Nil (On Import)	<ul style="list-style-type: none"> IGST exemption is available on imports of gold, silver or platinum by specified banks and other entities mentioned in list 34A, 34B & 34C of Sr. No. 359A of Notification No. 50/2017 – Customs dated 30.06.2017. GST Council, in its 50th meeting dated 11.07.2023, recommended to update the said list in accordance with the Appendix 4B of HBP, FTP, 2023, after confirmation by DGFT and DGEP. Accordingly, after confirmation from

				<p>DGFT and DGEP, notification No. 46/2023-Customs dated 26.07.2023 was issued (refer S.No. 3 in table), to update the list of banks and other entities as per revised Appendix 4B of HBP of FTP, 2023.</p> <ul style="list-style-type: none"> • Thereafter, representation has been received from Karur Vysya Bank, requesting to add its name in the said list in accordance with the DGFT new public notice 28/2023 dated 18.08.2023. Earlier name of this bank was not there in the list. • DGFT vide Public Notice No. 28/2023 dated 18.08.2023 published in office gazette has amended the said Appendix 4B of Handbook of Procedure (FTP 2023), updating: <ul style="list-style-type: none"> (i) the list of banks authorised by RBI to import both Gold & Silver for FY 2023-24, as mentioned at Part A of the Appendix. (corresponds to List 34 A of notfn. 50/2017-Cus); (ii) the list of banks authorised by RBI to import only Gold for FY 2023-24, as mentioned at Part B of the Appendix (corresponds to List 34B of notfn. 50/2017-Cus); <p><u>(Copy of Public Notice is attached herewith for ready reference Appendix I)</u></p> • Fitment committee recommended to: <ul style="list-style-type: none"> (i) update List 34A & 34B of Sr. No. 359A of Notification No. 50/2017 – Customs dated 30.06.2017 as per revised appendix 4B of HBP (FTP 2023) as amended and published by DGFT vide public notice 28/2023 dated 18.08.2023. (ii) obtain general approval from GST Council to update the lists as and when Appendix 4B is amended by DGFT and thereafter placing before Council for information as the changes are technical in nature.
3	Motor Vehicles (8703) purchased	28%	18% Presently only the orthopedically	<ul style="list-style-type: none"> • Hon'ble Madras High Court in the matter of writ petition filed by Ms. Carunia Seelavathi (who is a visually impaired person) passed a judgement dated 26.06.23 that the petitioner is eligible for GST concession for purchase of vehicle, as is presently available to orthopedically disabled persons.

	by Divyangjan.	<p>disabled are eligible for concessional GST rate of 18% on purchase of motor vehicles.</p> <p>The Hon'ble High Court of Madras has directed vide judgement dated 26.06.23 that the said concession be given to the petitioner who is visually impaired, within four weeks from date of receipt of letter from the petitioner.</p>	<ul style="list-style-type: none"> Presently, GST concession (18%) for purchase of vehicles (HSN 8703) is available only to orthopedic physical disabled persons <i>vide</i> Sl. No. 400 of Schedule III of Notification No. 01/2017-Integrated Tax (Rate). Entry is as under: <i>Following motor vehicles of length not exceeding 4000 mm, namely: -</i> <i>(a) Petrol, Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven vehicles of engine capacity not exceeding 1200cc; and</i> <i>(b) Diesel driven vehicles of engine capacity not exceeding 1500 cc</i> <i>for persons with orthopedic physical disability, subject to the condition that an officer not below the rank of Deputy Secretary to the Government of India in the Department of Heavy Industries certifies that the said goods shall be used by the persons with orthopedic physical disability in accordance with the guidelines issued by the said Department.</i> The GST Council in its 47th Meeting had discussed this issue. During discussion, it was opined that while there is merit in the proposal, GST rate tweaking may not be an appropriate method of relief as GST rate structure revision based on end use creates distortion. The concession rate for orthopedically disabled person has been continued from pre-GST regime. The benefit/concession to Divyangjan on purchase of vehicle should be in the form of reimbursement of GST already paid, which should be done through direct transfer through the budgetary route by the Department of Empowerment of Persons with Disabilities (DEPwD). Once a decision is taken to implement the scheme by DEPwD, through direct transfers, it is for the DEPwD to decide as to which category of disability need to be covered under the scheme. <u>As of now, no such scheme has been formulated by DEPwD.</u> <p>The Hon'ble Madras High Court directed that the Authority concerned shall ensure that necessary orders exempting the petitioner from the Motor Vehicle's tax as well as GST within a period of four weeks from the date of receipt of letter</p>
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				<p>from the petitioner Hon'ble Madras High Court judgment has vide order dated 23rd June, 2023 ordered to grant concessional GST rate to the petitioner, who is a visually handicapped. The relevant portion of the order is abstracted as below:</p> <p><i>“ Considering the recommendation of the Commission which is a commission specifically established for the disabled and taking into consideration the fact that today the visually challenged persons are having more opportunities of employment in the government sector and their commuting to the place of work becomes challenging , this court is of the opinion that the exemption has to be granted to the petitioner and accordingly, the writ petitions are allowed. The authority concerned shall ensure that necessary orders exempting the petitioner from the Motor Vehicle's Tax as well as GST are passed within a period of four weeks from the date of receipt of a undertaking letter by the petitioner.”</i></p> <ul style="list-style-type: none"> • (Copy of judgement is attached as Appendix -II for ready reference). • An appeal has been filed before Madurai bench, along with stay application on 07.09.2023 against the said judgement of Hon'ble High Court on the main grounds that the decision whether or not to provide exemption is to be determined by the GST Council and is a policy decision • Fitment committee recommended to place the order of Hon'ble High Court before the Council for information and suitable recommendation.
4.	Clarification on imitation Zari thread or yarn made out of polyester film (metallised /lacquered) /plastic film	5%	NA	<ul style="list-style-type: none"> • The GST Council in its 50th meeting had recommended reduction of GST rate to 5% on all imitation zari thread or yarn known by any name in trade parlance and consequently Sl No, 218AA was created in notification no. 1/2017- Central Tax (Rate) dated 28.6.2017. • The request for clarification has been received in respect of metal coated plastic film converted to metallised yarn (imitation zari) and twisted with nylon, cotton, polyester or any other yarn to make imitation zari thread. Doubts have been raised whether this item is covered under imitation zari thread or yarn notified at 5% or under the other metallised yarn category at 12%. • As per HS Explanatory Notes, the heading 5605 covers – <ul style="list-style-type: none"> 1) yarn of any textile material (including

				<p>monofilament , strip and the like, and paper yarn) combined with metal thread or strip, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present</p> <p>2) yarn of any textile material covered with metal by any other process including yarn covered with metal by electro-deposition.</p> <p>The heading also covers products consisting of a core of metal foil (generally of aluminium) or of a core of plastic film coated with metal dust, sandwiched by means of an adhesive between two layers of plastic film.</p> <ul style="list-style-type: none"> • Fitment Committee recommended that a clarification may be issued in light of explanatory notes. Fitment Committee also recommended to clarify that no refund will be permitted on polyester film (metallised /lacquered) /plastic film on account of inversion
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b) Issues where no change has been proposed by the Fitment Committee in relation to goods

Annexure – II

S. No.	Description of Goods /HSN	Present GST Rate	Requested GST Rate	Comments
1	Concrete mixers, Self-loading concrete mixers (SLCM) and boom pumps	As applicable	<p>To issue clarification that:</p> <p>(a) Concrete mixer, SLCM and boom pump supplied independently, or mounted on a chassis which is supplied by the customer, would not constitute a body for the motor vehicle and therefore not to be classified under HSN 8707 (28%).</p> <p>(b) The concrete mixer/ SLCM would be classifiable under Tariff Heading 8474 @ 18% (SI. No. 363 of III Schedule of Notification No.1 /2017- ITR</p> <p>(c) The boom pump would be classifiable under Tariff</p>	<ul style="list-style-type: none"> Issue is relating to classification of concrete mixers, concrete pumps, concrete mixer lorries and body of vehicle. Concrete mixers are classified under HS Code 8474 and accordingly attract 18% GST rate vide SI No. 363 of schedule III of notification no. 1/2017-Central Tax (Rate), dated 28.06.2017. Boom pumps i.e., concrete pumps are classified under HS Code 8413 and accordingly attract 18% GST rate vide SI No. 317A of schedule III of notification no. 1/2017-Central Tax (Rate), dated 28.06.2017. GST rate on concrete pumps was reduced from 28% to 18% vide amending Notification No. 41/2017 dt. 14-November-2017 by omitting their entry from SI. No. 117 of schedule IV of notification no. 1/2017-Central Tax (Rate), dated 28.06.2017. Concrete mixer lorries are classified under HS Code 8705 (SPV) and accordingly attract 18% GST rate vide SI No. 401A of schedule III of notification no. 1/2017-Central Tax (Rate), dated 28.06.2017. GST rate on Concrete mixer lorries was reduced from 28% to 18% vide amending notification No. 18/2018 dt 26-July-2018 by omitting their entry from SI No. 167 of schedule IV of notification no. 1/2017-Central Tax (Rate), dated 28.06.2017 wef 27.07.2018. As mentioned above, concrete mixers and concrete pumps have been specifically classified under Chapter 84 (attracting 18%). Concrete mixture lorries classified under 8705

			Heading 8413 and would attract GST @ 18% in terms of SI. No. 317A of III Schedule Notification No.1 /2017-ITR	<p>attracted 28% before 27.07.2018 and 18% thereafter. Body parts of motor vehicle (8707) attract 28%.</p> <ul style="list-style-type: none"> • Further, explanatory notes for HS code 8474 clearly mentions that concrete mixers permanently mounted on a railway wagon or a lorry chassis are , however, excluded from 8474 and will be covered under heading 86.04 or 87.05 respectively • Entries are clear, specific clarification may not be required. • Fitment Committee recommended to maintain status quo.
2	Spare Parts of Renewable Energy Devices irrespective of the end use	12%	To issue a clarificatory amendment to Notification No. 1/2017-Central Tax (Rate), dated the 28.06.2017 that the rate of GST on the spare parts of renewable energy devices is 12%, irrespective of the end-use (used in manufacture of the renewable energy devices or used for replacement, repair or for maintenance of the renewable energy devices).	<ul style="list-style-type: none"> • Presently, concessional rate of 12 % (wef 01.10.2021) has been provided to following renewable energy devices and parts for their manufacture: <ul style="list-style-type: none"> (a) Bio-gas plant; (b) Solar power based devices; (c) Solar power generator; (d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants / devices; (f) Solar lantern / solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels... <p>[S. No. 201A of Schedule II of notification No. 01/2017-CT(Rate) dated 28.06.2017]</p> • Prior to 01.10.21, these goods attracted a concessional GST rate of 5% under S. No. 234 of Schedule I of notification No. 01/2017-CT (Rate). On the recommendations of 45th meeting, it was

				<p>decided to increase the rate from 5% to 12 % to correct inversion.</p> <ul style="list-style-type: none"> • Presently, the concessional rate of GST is applicable only on the <u>parts for manufacture of enlisted devices</u> • However, if these parts are purchased for replacing the parts on existing renewable energy devices, the concessional GST rate would not apply as the parts are not being used in the manufacture these devices. In such cases, the standard GST rate is applicable based on their classification and the rates notified. • The proposal will lead to expansion of the scope of concession. <p>Fitment Committee recommended to maintain Status quo</p>
3.	Electric Vehicle Battery [8507]	18%	5%	<ul style="list-style-type: none"> • Lithium ion batteries attract a GST rate of 18% (S.N. 376 AA-Sch -III, Notification 1/2017-CTR), which is already lower than the 28% GST rate (S.N. 139 , Sch -IV, Notfn 1/2017-CTR) charged on other electric accumulators/batteries falling under HSN 8507. • Electric vehicles generally use lithium ion batteries. • Lithium ion batteries have multiple uses i.e. cellular mobile phones, portable electronics, electric vehicles etc. We may not consider request. <p>Fitment Committee recommended to maintain Status quo</p>
4.	Sugar boiled Confectionary	12%	Clarification regarding the scope of 'Sugar Boiled Confectionery'.	<ul style="list-style-type: none"> • Sugar boiled confectionary attract GST at the rate of 12% and Sugar confectionary attract GST at the rate of 18%. • Sugar boiled confectionary refers to boiled sweets which has a dedicated 8-digit HS

				<p>Code 1704 90 20.</p> <ul style="list-style-type: none"> • Fitment Committee was of the view that Sugar boiled confectionary is distinguishable from sugar confectionary. • Fitment Committee recommended that no clarification is required in view of the existing BIS standards.
5.	Aerated beverages and energy drinks	GST Compensation Cess @12%	<p>Cess payable by CSD on outward supply of good may be fully exempted</p> <p style="text-align: center;">OR</p> <p>applicable cess may be collected at the Depot level for supplies made by URCs</p>	<ul style="list-style-type: none"> • Aerated beverages and energy drinks, falling under HS 2202 attract CC@12%. • <i>Vide</i> notification No. 7/2017- Central Tax (Rate), dated 28.06.2017, and corresponding IGST/SGST notifications supply of goods, under any Chapter, by the Unit Run Canteens to the authorized customers is fully exempt from GST based on recommendation of the GST Council in the 15th Meeting. • In the said meeting, after detailed deliberation, a conscious policy decision was taken by the Council that no concession is to be given from levy of Compensation Cess. • Hence Fitment Committee recommended no change in the rate. • As regards the suggested option of collecting applicable cess at the Depot level for supplies made by URCs, Fitment Committee recommended that the matter may be referred to the Law Committee for consideration.
6.	Tobacco products	Various rates	<p>Uniform additional compensation cess on cigarettes/ compensation cess on bidis/ additional compensation cess on smokeless tobacco products/ or lower compensation cess on cigarettes sticks up to 70 mm</p>	<ul style="list-style-type: none"> • Tobacco products such as cigarettes, chewing tobacco, gutkha, etc. attract GST, Compensation Cess, Basic Excise Duty and National Calamity Contingent Duty (NCCD), while Bidis attract GST, Basic Excise Duty and National Calamity Contingent Duty (NCCD). • In respect of tobacco and tobacco products, while deciding the Compensation Cess rates, it was decided that in line with the weighted average VAT rate [28.7%], the GST rate on cigarettes may be kept at 28%. • Regarding bidis, in the 15th GSTC Meeting, the Fitment Committee had proposed the GST rate of 28% on bidi taking into account the fact that the total tax incidence on Bidi was 25.68% and the Fitment Committee had left open the issue

				<p>of Compensation Cess on Bidi. The GST Council, after detailed deliberation, decided to charge 28% GST on bidis as proposed by the Fitment Committee but decided not to levy any Compensation cess on bidis. It has remained unchanged since then.</p> <ul style="list-style-type: none"> • Bidi industry is, in fact, a household industry in certain parts of India. Significant number of workers are engaged in the manufacture of biris and are rolled mostly by women at home. Thus it becomes a livelihood issue. • On the basis of the recommendation taxation, the GST Council in its 49th and 50th Meeting, the Compensation Cess rate levied on such commodities with declared retail sale price has been linked to retail sale price and is leviable at a rate ranging from 8% to 69% of retail sale price. • In the Union Budget 2023-24, the National Calamity Contingent Duty (NCCD) rate on specified cigarettes has been revised upwards by about 16 percent with effect from 02.02.2023. This change is expected to lead to increased collections of GST. • The Fitment Committee recommended to maintain status quo.
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c) **Issues deferred by the Fitment Committee for further examination in relation to goods**

Annexure – III

S. No.	Description of Goods /HSN	Present Rate	Requested Rate	Comments
1	Khari, Cream Rolls [Bakery products] (HS 1905)	18%	To clarify that Khari and crème roll are covered under “similar toasted products”, and attracts 5% GST rate	<ul style="list-style-type: none"> Fitment Committee examined the issue before the 47th, 48th & 50th GST Council Meetings and observed that further details regarding the nature of product, process of preparation is required before making any suggestions and the matter was deferred for further examination. 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. [<i>other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products</i>], falling under CTH 1905, attract GST rate of 18% Maharashtra suggested to get the same examined by Foods Research Institutes. The Fitment Committee recommended to defer this matter.
2.	Steel scrap	18%	(i) 5% (with ITC),or 2% (without ITC),or 5% or 18% (under RCM (ii)Exempt when sold by dealers and RCM in last leg when sold to manufacturer, or 5%, or	<ul style="list-style-type: none"> 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 Currently, GST rate on scrap [falling under 7204, 7404, 7503, 7802, 7902, 8549] is 18% on forward charge basis as per section 9(1) of CGST Act, 2017. 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

		<p>1% without ITC, for traders only</p> <p>(iii) Wholesaler to manufacture- option of 18 % FCM or 5% RCM</p>	<p><u>Observation by Karnataka & Punjab during 47th GST Council Meeting:</u></p> <ul style="list-style-type: none"> 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 <p><u>Industry Consultation by Karnataka:</u></p> <ul style="list-style-type: none"> 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. 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". Accordingly, the industry requested to consider the following: <ul style="list-style-type: none"> Create distinct classifications for obsolete scrap and other kinds of scrap for ease of
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				<p>monitoring and appropriate tax treatment, and</p> <ul style="list-style-type: none"> ▪ Accept one of the two proposals laid down by the association for obsolete scrap i.e. <ul style="list-style-type: none"> ✓ Reverse charge mechanism on sales to manufacturers, or ✓ GST @ 1% without input tax credit. <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ▪ 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. ▪ 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. ▪ 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 be studied ▪ 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
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				<p>administratively efficient to boost tax collection. Further, e-way bill should be mandatory for all transactions in scrap irrespective of value.</p> <ul style="list-style-type: none"> • Fitment Committee observed that RCM is not feasible but acknowledged that some solution should be found to address the problems of the industry. • Accordingly Fitment Committee decided to create a sub-Committee of officers to study the issue holistically and to come up with workable solution. • The Sub Committee has met on two occasion and is likely to submit its report shortly. .
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d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services

Annexure-IV

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
1.	<p>a. To notify a mechanism for availment/ utilisation of ITC in cases where passenger transportation services by AC buses are supplied through an ecommerce operator (ECO).</p> <p>b. To shift the onus of discharging GST on the registered bus operators providing passenger transportation service through ECOs</p>	<p>W.e.f 01.01.2022, the liability to pay tax in respect of passenger transportation services provided by AC buses has shifted from bus operator to ECO. As a result, ITC of input services and goods are getting accumulated as there is no mechanism on GST portal to transfer ITC to ECO for payment of tax. ITC accumulation is more pronounced in the case of electric bus operator as the cost of electric buses is 2-3 times more than other buses.</p> <p>Alternatively, the onus to discharge GST on sale of tickets for passenger transport service through ECO may be shifted to the registered bus operators.</p>	<ul style="list-style-type: none"> • Passenger transport services attract GST at the rate of 5% with ITC of input services in the same line of business or 12% with full ITC. • W.e.f 01.01.2022 bus transportation service through ECOs has been notified under section 9(5) of CGST Act, 2017 thereby making ECOs liable to pay GST on the service. • Bus transportation service supplied through ECO was notified under section 9(5) on the representation of the industry that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliance requirements. • Representations have been received from two entities both of which are companies stating that they supply services through ECO as much as through offline and due to notification of their service under section 9(5), they are not able to fully utilize their ITC. This accumulation of ITC is more pronounced in case of electric buses which are two/ three times costlier than ordinary buses. • It has been requested that like hostel accommodation, where hostels having turnover over the registration threshold have been excluded from the purview of section 9(5) of CGST Act, 2017, registered bus operators may be excluded from provisions of section 9(5) of CGST Act, 2017. • However, in case of bus transport services, an operator operating even a single bus will be above the registration threshold. Excluding registered bus

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<p>operators or operators above the registration threshold from purview of section 9(5) may defeat the twin objectives of (a) collecting tax from a single point (ECO) rather than a large number of unorganized small operators spread across the country and (b) ease of doing business for small businesses.</p> <ul style="list-style-type: none"> • To arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, Fitment committee recommended that companies may be excluded supplying passenger transport services by a motor vehicle from the purview of section 9(5) of CGST Act, 2017. • While examining this issue, Fitment Committee has found that GST rate of 5% with credit of input services in the same line of business is leading to inversion of tax and credit accumulation. One of the reasons for this is that input services in the same line of business attract GST at rates higher than 5%.Fitment committee recommended that where GST on input service in the same line of business is payable/paid by the supplier of input service at a rate higher than 5%, the supplier of passenger transport service by any motor vehicle would be entitled to ITC only to the extent of such amount of GST as would have been payable on the input service in the same line of business at the rate of 5%. • Further, same line of business has been described in the entry as “<i>service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle</i>”. It may be clarified through a circular that input services in same line of business include transport of passengers (SAC 9965) or renting of motor vehicle with

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			operator (SAC 9966) and not leasing of motor vehicles without operator (9973), which attracts GST at the same rate as sale of motor vehicles, that is, 28% plus compensation cess.
2.	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.	<p>In terms of Sl. No. 13 of notification No. 11/2017 Central Tax (Rate) dated 28/06/2017 and <i>pari materia</i> 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%.</p> <p>In terms of Sl. No. 25 of notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 and <i>pari materia</i> 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.</p> <p>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</p>	<ul style="list-style-type: none"> Calcutta High Court in the case of Srijan Realty (P) Ltd. Vs. Commissioner of Service Tax, has held vide order dated 08.03.2019 that an entity not licensed/authorized to supply or distribute or trade electricity cannot be supplying electricity as goods and the same has to be considered as a supply of service. However, it is seen from the Delhi Electricity Regulation Commission (Supply Code and Performance Standards) Regulations, 2017, that developers including private developer, private colonizers, builders, Cooperative Group Housing societies, group housing societies, co-operatives, associations etc., may obtain a single point supply of electricity from the distribution licensee, for premises with multiple consumers/ beneficiaries such as multi -storey building, residential or residential cum commercial complex, Commercial or Industrial Complex etc. and supply the same to individual consumers/beneficiaries by installing separate sub-meters. Therefore, it appears that in Delhi and other states having similar regulations, the ratio of the Calcutta High Court judgment may not apply. The West Bengal AAR Order dated 08.08.2023 in the matter of Airports Authority of India, has held that nature of supply of transmission or distribution of electricity by AAI to its licensees/ tenants is that of a composite supply, where the principal supply is that of providing license to use the

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>Low Tension line in transformers and through panels the same is being distributed to the sub lessees/occupants for their consumption.</p> <p>DISCOMs bill directly to the real estate companies, who in turn bill to the end 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”.</p> <p>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.</p>	<p>specified premise by the licensee/ tenant and supply of electricity is naturally bundled in conjunction with the aforesaid supply.</p> <ul style="list-style-type: none"> Fitment Committee recommended to clarify that whenever electricity is being supplied with renting of immovable property and/or maintenance of premises etc. it forms a part of composite supply where the principal supply is renting of immovable property and/or maintenance of premise etc. and the supply of electricity is an ancillary supply. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise etc. would be applicable. However, where the real estate owner supplies electricity as pure agent in accordance with Rule 33 of CGST Rules, 2017, it will not form part of value of his supply.
3.	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	<ul style="list-style-type: none"> The 45th GST Council (Sl.No.7 of Annexure-VI, Agenda No. 14) had deferred the matter with directions to obtain details about the nature of activities undertaken by DMF from Odisha. Government of Odisha, vide letter No. FIN-CT1-TAX-0030-202323474/F dated 21.08.2023 (Appendix-III) has, inter-alia, informed as under:

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities etc.</p>	<ul style="list-style-type: none"> • DMF Fund of the district is an extra-budgetary resource to be utilized for the interest and benefits of the mining affected people and areas. Other extra-budgetary sources include Compensatory afforestation Fund Management and Planning Authority (CAMPA), Odisha Mineral Bearing Areas Development Corporation, Odisha State Agricultural Marketing Board, Building and Other Construction Workers Welfare Board etc. • DMF Trusts have been constituted in all the districts of Odisha to implement various developmental and welfare programmes in mining affected areas. DMF Trusts with approval from DMF Trust Board take up permissible activities directly (through NGOs, PSUs, private organizations etc.) and indirectly (by funding line ministries, departments of State Governments) in mining affected areas. • Activities undertaken by DMF include <ul style="list-style-type: none"> ○ drinking water supply ○ environment preservation and pollution control measures ○ health care ○ education ○ welfare of women and children ○ skill development, sanitation ○ road connectivity ○ energy and watershed development ○ afforestation ○ physical infrastructure

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<ul style="list-style-type: none"> ○ supply of medical equipment, instruments & furniture to PHCs/CHCs. ○ infrastructural support for education sector through capacity building of teachers, construction of hostels, science labs etc. ○ construction of Old Age home, rescue/ rehabilitation centre. <ul style="list-style-type: none"> • Activities are similar to activities that are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution. • Most of these activities are implemented by Government Line Departments. Some of these services are being implemented through NGOs, PSUs, Private Organizations selected through tendering process. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realised from the beneficiaries by DMF against such services. The value of goods and services supplied by Implementing Agencies in the last two years for major 8 districts (where 99% of the DMF Fund is accrued or allocated for various projects) stands at Rs. 6685 crores and GST has been paid to the extent of Rs. 776 crores. • Fitment Committee recommended to clarify that DMFT is a governmental authority and thus eligible for the same

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			exemptions as available to any other Governmental Authority.
4.	<p>To clarify that job work for processing of “Barley” into “Malted Barley” is covered under entry no. 26(1)(f) of notification no. 11/2017-CT(R) dated 28.06.2017 which covers “jobwork services in relation to food and food products” and thus attracts GST @ 5%.</p> <p>or</p> <p>In the event it is held that GST @18% is leviable, to regularize past supplies on as is basis.</p>	<p>Barley malt manufacturing process comprises of (a) cleaning of raw barley ;(b) steeping of cleaned barley; (c) germination and (d) kilning.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>In the event, it is held that GST at 18% is leviable , to regularize the past supplies on as is basis, as they are</p>	<ul style="list-style-type: none"> • The issue involved 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 tariff" or at the rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption. • 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. Malt is also used in the manufacturing of infant food, weaning baby food, medicinal syrup. Additionally, malt flours are used to add flavor and browning in baked goods such as yeast bread, biscuits and cakes as well as in cereal production. • Malt falls in chapter 11 of Customs Tariff (Malt-whether or not roasted, HSN 1107 1000 and 11072000). • GST rates of the end products manufactured using barley malt are as under: <ul style="list-style-type: none"> ○ Malt (whether or not roasted) (HSN 1107 1000 and 11072000): 18% ○ Maltose (HSN 1702) : 18% ○ Malt extract, Food preparations of flour, groats, meal, starch or Malt extract (HSN 1901): 18% ○ Malto dextrin Syrup (HSN 2106) : 18% ○ Beer, Liquor : Outside ambit of GST at present.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		not in position to collect differential duty from their customers and will lead to closure of units.	<ul style="list-style-type: none"> • A substantial part of malt is used for manufacture of alcoholic liquor for human consumption. • Malt manufacturers who carry out job work for liquor have requested for clarification based on notices received by them demanding 18% GST under the entry covering job work services in relation to manufacture of alcoholic liquor for human consumption . • As per sciencedirect.com: <p>“... <i>Malting involves the sprouting (germination) of <u>grain</u> in moist air, under controlled environmental conditions. The malt is generally dried to produce a shelf-stable product.</i> ... <i>In addition, many <u>micronutrients</u> are made more available through malting. Although malting is primarily used for the beer-making process, malt can be used as <u>food</u> or added to other grain <u>foods</u> to improve their nutritional value</i> ... <i>Not only is malt itself a nutrient-rich food, it can be added to unmalted grain foods to improve their nutrient density and palatability. In this application, malt is referred to as power flour or amylase-rich flour. Power flour is particularly useful for porridge-based infant weaning foods and for the elderly and infirm.</i> ...”</p> • It is a settled position that a specific entry for any goods or services should be given preference over a general or less specific entry.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<ul style="list-style-type: none"> Fitment Committee recommended to clarify that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) “which covers job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff” irrespective of the end use of that malt. Fitment also recommended to regularise past assessments of job work services in relation to manufacture of malt on as is basis. Supplies on which tax has been paid at 5% will be considered as fully GST paid and at the same time, no refund shall be given of taxes already paid at GST rates higher than 5%.
5.	To specify a positive list of services under Sr. No. 3 & 3A of notification No. 12/2017-Central Tax (Rate)		<ul style="list-style-type: none"> This issue has been discussed in the 45th, 47th and 48th GST Council meetings held on 17.09.2021, 28&29.06.2022 and 17.12.2022 respectively. A detailed background note (Appendix-IV) on the issue including the views of the States, the details of deliberations in the Fitment Committee meetings and recommendations made by the Fitment Committee based thereon, deliberations and directions of GST Council meetings on the issue is annexed. In the 50th GST Council meeting held on 11.07.2023, it was suggested by Karnataka that the exemption entries at 3 and 3A of notification No. 12/2017-CT (R) should continue to cover all the activities specified in the 11th and 12th Schedule of the Constitution and that the words “in relation to” appearing in entry 3 and 3A of Notification No. 12/2017-CT (R) may be substituted by the words “by way of” to remove difficulties caused by wide interpretation of the phrase “in relation to”.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<ul style="list-style-type: none"> The issue was discussed in detail. It was felt that replacing the words “in relation to” in Sl. No. 3/3A of notification No. 12/2017-CTR dated 28.06.2017 with the words “by way of” may create more confusion and disputes as Sl. No. 3/3A of notification No. 12/2017-CTR dated 28.06.2017 will then read as “service by way of minor forest produce”, “services by way of fuel and fodder”, “services by way of markets and fairs” which will have no meaning. After detailed deliberations, Fitment recommended that entries at Sl. No. 3 and 3A of notification No. 12/2017-CTR dated 28.06.2017 may be retained as they are with no change. Fitment Committee also recommended that a new entry may be created to exempt following five services supplied to Governmental Authority: <ul style="list-style-type: none"> Water Supply Public health Sanitation Conservancy Solid waste management Slum improvement and upgradation
6.	Request to bring supplies made by Indian Railways under forward charge mechanism from the existing reverse charge mechanism.	<p>Indian Railways in addition to transportation services also provides various other services such as issue of licenses for catering, renting of immovable property, sale of old and used goods etc.; GST on which is payable under reverse charge basis.</p> <p>As per Section 17(3) of CGST Act, 2017 supplies liable to GST under RCM</p>	<ul style="list-style-type: none"> Entry at Sr. No. 5 of notification No. 13/2017-CTR provides that services supplied by the Central Government, State Government, Union territory or local authority to a business entity, excluding a few specified services shall be taxed under RCM in the hands of the business entity. One of the services supplied by government which is taxable under forward charge mechanism is transport of goods or passengers including by Railways. Entry at serial no. 6 of notification No. 4/2017-CTR provides that supply of

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>are treated as exempt supply for purpose of ITC availment and thus expenditure incurred in respect of supplies liable to RCM is liable to be reversed.</p> <p>Inability of Indian Railways to avail ITC on account of RCM along with other reasons such as exempt supplies has led to blockage of huge amount of ITC.</p> <p>It is estimated that the burden on Indian Railways on account of ineligibility of ITC on RCM is approx. 1300 crores annually.</p> <p>It is requested that all supplied made by Indian Railways may be brought under forward charge. Similar facility was extended recently to services supplied by Department of Posts.</p>	<p>used vehicles, seized and confiscated goods, old and used goods, waste and scrap by government (which includes IR) to a registered person shall be liable to be taxed under RCM in the hands of the registered person.</p> <ul style="list-style-type: none"> • As a result, only services of transport supplied by Indian Railways are taxable under forward charge. Other services supplied by Indian Railways such as renting of immovable property, grant of catering licenses and sale of old and used goods are under RCM. • As informed by Railways, ITC of approx. Rs. 1300 crores is getting blocked due to RCM liabilities. • The issue has been deliberated in the Fitment Committee and it is recommended that all goods and services supplied by Indian Railways may be brought under forward charge. • Recently, services by Department of Post have also been brought under forward charge on recommendations of the 47th GST Council. • Certain exemptions on services supplied by government (which included IR) to individuals, unregistered business entities having turnover below the registration threshold, services valued at Rs 5000 or less (Rs. 5000 in a year in case of continuous supply of service) have been given so as to ensure that individuals or small unregistered businesses are not required to take registration to pay GST on them under RCM. Similarly, services by Central Government, State Government, Union Territory or local authority to another Central Government, State Government, Union Territory or local authority have been exempted as services supplied by Central Government, State Government,

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<p>Union Territory or local authority are generally under RCM.</p> <ul style="list-style-type: none"> In case, it is decided to tax all goods and services supplied by Indian Railways under forward charge, Indian Railways may be excluded from the above exemptions; otherwise, it would defeat the purpose of bringing all supplies of Indian Railways under forward charge mechanism. Accordingly, Fitment Committee recommended that,- <ul style="list-style-type: none"> (i) All goods and services supplied by Indian Railways may be brought under forward charge. (ii) Indian Railways may be excluded from the aforesaid exemptions.
7.	Request for clarification on entry 54(g) of 12/2017-CT(R) dated 28.06.2017 with regard to the scope of exemption for commission agent in facilitating the sale of agricultural produce.	<p>Central Arecanut & Cocoa Marketing & Processing Co-operative Ltd. popularly known as CAMPCO is a multi-state cooperative of the two states of Karnataka and Kerala . The main activity of CAMPCO is purchasing and selling arecanut, cocoa, rubber and pepper in their primary form and grown by their members in both the states.</p> <p>CAMPCO markets arecanut grown in the two states through their authorized selling representatives (SRs) known as Commission Agents. For the service rendered by the Agents, commission is paid after</p>	<ul style="list-style-type: none"> CAMPCO is a multi-state cooperative of growers of arecanut, pepper, rubber and cocoa etc. It purchases arecanut directly from agriculturists and sells it to buyers in northern parts of India through its Selling Representatives (SRs). According to CAMPCO, they do grading and packaging of arecanut in standard bags before supplying it to buyers without altering its essential characteristics. Show cause notices have been issued to the SRs of CAMPCO demanding GST on the commission charged by the SRs from CAMPCO. The issue was deliberated in the Fitment Committee and it was felt that CAMPCO may be advised to approach Authority for Advance Ruling.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>deducting TDS u/s 194H of the Income Tax Act, 1961.</p> <p>The term “commission agent” has not been defined in the CGST/IGST Acts. However, the term “agent” has been defined under section 2(5) of the CGST Act, as under:</p> <ul style="list-style-type: none"> • “(5) “agent” means a person, including a factor, broker, commission agent, <i>arhatia</i>, <i>del credere</i> agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.” <p>The SRs who act as commission agents for sale of agricultural produce viz. arecanut and pepper, by CAMPCO are covered by the definition of “agent”. Since the exemption is granted to commission agents, the SRs are exempted from payment of GST on the services of commission agent provided by them to CAMPCO.</p> <p>In the instant case, the selling representatives/commission agents are providing services of facilitating the sale of agricultural produce.</p>	

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		Hence, the activities undertaken by the selling representatives/commission agents of CAMPCO as narrated supra would fall within the ambit of exemption entry Sl.No. 54(g) of notification 12/2017-CT(R) dated 28.06.2017.	
8.	To clarify applicability of GST on Horticulture Contracts of CPWD	<ul style="list-style-type: none"> Horticulture development and its maintenance at all government premises (residential and non-residential) are taken care of by the Horticulture unit of CPWD. These horticulture related works are carried out through outsourcing contracts wherever the regular workers are not available. Such contractual agreements are drawn observing formalities as prescribed in CPWD manual and prevailing GFR guidelines. However, the nature and scope of horticulture works performed by gardeners, dealing with perishable and living plants is significantly different from other construction related works. Maintenance of community assets, 	<ul style="list-style-type: none"> Public parks in government residential colonies, government offices and other public areas such as India Gate lawns, Raj Ghat and other Samidhi Sthals are developed and maintained by CPWD. Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution. Sr. No. 3 and 3A of notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 75%, 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. Fitment Committee recommended to clarify to CPWD that supply of pure services and composite supply of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) to CPWD in relation to any

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>urban forestry and protection of environment and promotion of ecological aspects are listed in the 11th and 12th Schedule of the constitution.</p> <p>Horticulture units working under CPWD are located across the country and execute different kind of horticulture related works on day-to-day basis for example development of lawn, preparation of beds, new plantation, supply of different kind of foliage, indoor, ornamental plants and potted plants for display at different sites etc.</p>	<p>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 are exempt from GST under Sr. No. 3 and 3A as they exist today.</p>
9.	Amendments to notification No. 11/2017-CT(R) dated 28.06.2017 consequent to amendment of CGST Act, 2017		<ul style="list-style-type: none"> • In GST, ‘goods’ by definition include actionable claims. Therefore, supply of actionable claims by way of lottery, betting and gambling is a supply of goods. The rate for them is prescribed in Sl. No. 228 and Sl. No. 229 of Schedule IV of the goods rate notification No. 1/2017-CT (R) dated 28.06.2017. • However, the following entries also figure in services rate notification No. 11/2017-CT(R) dated 28.06.2017: <ul style="list-style-type: none"> ○ Entry at Sl. No. 34 (iv) which specifies GST rate of 28% for “<i>services provided by a race club by way of totalizator or a license to bookmaker in such club</i>”. <p>Supply by a race club by way of totalizator is supply of actionable claims (i.e. goods) and not services.</p>

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			<p>Therefore, this entry may be rationalized as <i>“Services provided by a race club by way of licensing a bookmaker in such club”</i></p> <ul style="list-style-type: none"> ○ Sl. No. 34(v) which specifies GST rate of 28% on “gambling”. <p>This entry may be omitted as ‘gambling’ is also included in Sl. No. 229 of goods rate schedule. Secondly, the definition of ‘specified actionable claims’ inserted vide CGST Amendment Act, 2023 also includes gambling.</p> <ul style="list-style-type: none"> ● The issue was deliberated in the Fitment Committee meeting held on 26.09.2023 and the proposed amendments were agreed upon.

e) **Issues where no change has been proposed by the Fitment Committee in relation to services**

Annexure-V

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
1.	To apply uniform GST rate of 5% on Business Correspondent services provided in both rural/urban areas.	<p>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:</p> <p>Notification No. 12/2017 dated 28.6.2017 and Circular No. 86/5/2019-GST dated 1.1.2018 reads as follows:</p> <p><i>“(i) Exemption of GST on services provided by business 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.</i></p> <p><i>(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.”</i></p> <p>Under the present notification, there are difficulties in availing the benefit of GST exemption as</p>	<ul style="list-style-type: none"> 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: <p><i>Services by the following persons in respective capacities –</i></p> <p><i>(a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;</i></p> <p><i>(b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or</i></p> <p><i>(c) business facilitator or a business correspondent to an insurance company in a rural area.</i></p> The issue was examined in the Fitment Committee and it was felt that the specific exemption for services provided by BC/BF to banking companies in respect of rural area branches has been given in line with the objectives of financial inclusion. There appears to be no merit in the request to apply uniform GST rate of 5% on Business Correspondent services provided in both rural/urban areas.

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		<p>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.</p> <p>In recent years, financial inclusion and Digital Banking Service have increased rapidly in the country especially 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.</p> <p>In view of the crucial role being played by BCs. GST 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.</p>	<ul style="list-style-type: none"> Fitment Committee recommended to maintain status quo.
2.	To bring renting of residential dwellings by registered persons to registered persons under Forward Charge Mechanism.	<p>It has been submitted that there are various registered persons like body corporates who are engaged in the business of renting of residential dwellings to other registered persons like body corporates who further give these dwellings on rent to their employees for residence.</p> <p>In view of the amendment in notification no. 13/2017-Central Tax (Rate) dt. 28.07.2017, vide notification no. 05/2022 CTR dated 13.07.2022, henceforth such transactions of renting of</p>	<ul style="list-style-type: none"> The representing association was asked to give specific instances where trade/business has found difficulty in implementation of the said notification dated 13.07.2022. No real life examples or difficulties in implementation of the said notification were brought to notice by representing association. The issue was examined in the Fitment Committee wherein it was recommended to maintain status quo.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>residential dwelling by registered person to a registered person would be liable to GST under reverse charge and accordingly, these transactions would be considered as exempt supply for the service provider i.e. a registered person.</p> <p>This would adversely affect such registered persons who are in this business, since the ITC on the input services would not be available as the output supply is considered as exempt supply being taxed under reverse charge. This would not only affect the business of such registered persons but will also increase the cost of rent in the hands of the employee as an individual to whom this residential dwelling is ultimately rented if the rent is recovered from the employee.</p> <p>In order to avoid cascading effect of taxes, where a registered person is making a further supply to another person of the same category of service, viz. renting of residential premises, the input tax credit should be eligible to the recipient of service. For the same, such renting transactions should be made liable to GST under forward charge and not under reverse charge.</p>	
3.	To clarify that ' <i>sale of land</i> ' at Entry No. 5 of Schedule III of the CGST Act includes assignment	Vide the said representations it has been submitted that "assignment of leasehold rights in land" is akin to "sale of land" and covered by Entry No. 5 of	<ul style="list-style-type: none"> • Transactions in immovable property other than sale of building and land are taxable under GST. • Sale of land and lease of land are not the same thing. While sale of land results in transfer of title to land along with all the benefits arising out of it,

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	of leasehold rights in such land.	<p>Schedule III of the Central Goods and Services Tax, Act 2017 (hereinafter referred to as 'CGST Act, 2017').</p> <p>The activity of assigning leasehold rights in land is also a beneficial interest in land and should also qualify as "land". Accordingly, the transaction of assignment of leasehold rights in land should qualify as 'sale of land' and GST should not be leviable as per Entry No. 5 of the Schedule III of the CGST Act, 2017.</p>	<p>the lease of land, does not result in transfer of title to that land or all rights/benefits arising out of it.</p> <ul style="list-style-type: none"> The actual control to dispose of or sell the immovable property lies with the owner of the land. The lessee cannot sell the land. Supply of service is taxable if two conditions are fulfilled, - <ul style="list-style-type: none"> i. There must be a supply of service by the service provider to service recipient and, ii. Service recipient pays a consideration in cash or kind to the service provider. In case of lease of land given by lessor to a lessee, both the above two conditions get fulfilled. Lessee is allowed to use the land and lessor receives consideration from the Lessee, and therefore, it constitutes a supply under section 7 of the CGST Act, 2017. Lease of land was taxable in Service Tax regime also. Schedule II , para 2 clearly states that – <p>“</p> <p>(a) any lease, tenancy, easement, licence to occupy land is a supply of services;</p> <p>(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.”</p> The issue was discussed in the Fitment Committee and it was of the opinion that question of lease of land being covered under entry 5 of Schedule III

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<p>which deals with sale of land and building does not arise.</p> <ul style="list-style-type: none"> Fitment Committee recommended not to accede to the request.
4.	Request to provide exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST vide entry at SI. No. 41 of Notification No. 12/2017-Central Tax (Rate)	<p>It has been submitted that the members had obtained land on long-term lease for industrial purpose from various State Government Industrial Development Corporations [such as MIDC] for conducting its business operations. Such members have assigned the right in land to various parties for consideration.</p> <p>The initial lease of such land from MIDC is exempt under GST. If the initial lessor uses the land for his own purpose for 99 years, there will be no revenue on account of CST that will accrue to the Government.</p> <p>However, if the lessor further assigns the leasehold rights in the land, say, after 20 years and collects consideration equal to the proportionate amount of lease premium paid to MIDC for the remaining 79 years of lease, the same is currently not exempt from payment of CST.</p> <p>Therefore, it has been requested to grant exemption in case of assignment of leasehold rights in land where the initial lease was exempt from GST</p>	<ul style="list-style-type: none"> Entry at SI. No. 41 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts long term lease of industrial plots or plots for development of infrastructure for financial business, by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent, or more ownership of Central Government, State Government, Union territory. This entry does not cover reassignment or sub-leasing of leasehold rights of land by the lessee. Exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST will encourage hoarding of industrial plots for the purpose of re sale and defeat the objective of promoting and setting up of industrial units. Fitment Committee did not recommend any change. During the discussion on the issue, a query arose whether ITC of lease of industrial plots is available or blocked by Section 17(5) of CGST Act, 2017. On the said issue of whether ITC of lease of land is available, Fitment Committee recommended to refer the same to Law Committee.

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5.	Request from State of Nagaland to keep the rate of GST @ 12% on works contract services which commenced prior to 18.07.2022.	<p>In the said request, it has been stated that the enhanced rate of GST @ 18% should not be levied for works contract started prior to 18.07.2022 in the State of Nagaland.</p> <p>It has been informed that working season in state like Nagaland is short due to rains and due to resource constrains these works spill over one financial year to another.</p> <p>Therefore, increased rate of GST will cost 6% more on the budgeted amount for large number of ongoing works as order were issued prior to 18.07.2022.</p>	<ul style="list-style-type: none"> Based on the recommendations of the GoM on Rate Rationalisation and the 47th GST Council meeting, held in June, 2022, the rate of GST on works contract services for construction of roads, bridges etc. and on works contract services supplied to Central and State Governments for specified projects has been increased from 12% to 18% w.e.f. 18th July, 2022 vide notification No. 3/2022 CTR dated 13.07.2022. Similar issue was examined and not acceded to by the GST Council in 47th meeting of GST Council held on 28-29 June, 2022. The Council did not agree to the proposal to apply the increased rate of GST on works contract services only to contracts entered into after the date of increase of rate for following reasons: <ul style="list-style-type: none"> GST law clearly provides for the manner in which continuous supply are subject to GST in case of rate change. The standard rate of 18% will apply only to the invoices issued for such construction on or after 18-7-2022. Any request, if agreed for one sector, would invite similar request from other sectors. There are similar requests for grandfathering in solar, renewable energy and other sectors. Further, in goods also in case of any rate increase, the

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			<p>taxpayers seek continuation of lower rate of all goods in the pipe lines, i.e. cleared from factory but pending in supply chain. Their request has not been accepted.</p> <ul style="list-style-type: none"> ▪ If 12% rate is continued for old contracts, multiple rates of 12% and 18% would be there for many years in future leading to complex rate structure. • Fitment Committee recommended to maintain status quo.
6.	Clarification has been sought on whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the Real Estate (Regulation and Development) Act, 2016.	<ul style="list-style-type: none"> • RERA is a statutory authority established under Real Estate (Regulation and Development) Act, 2016 enacted by the Parliament for the regulation and promotion of the real estate sector with a mandate to discharge its statutory functions prescribed in the above Central Act and the Rules and Regulations made by the respective state/ UT government. • Under the said regulation, real estate projects and real estate agents have to get themselves registered with the (RERA) for which they get a registration/renewal fee. They also collect penalty in case of failure to register or acting in contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016. • The fees collected get credited to the Real Estate Regulatory 	<ul style="list-style-type: none"> • Entry 4 of notification No.12/2017 exempts “<i>services by Central Government, State Government, Union Territory, local authority or a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the constitution</i>”. • Governmental Authority has been defined as “<i>an authority or a board or any other body,—</i> <ul style="list-style-type: none"> (i) <i>set up by an Act of Parliament or a State Legislature; or</i> (ii) <i>established by any Government</i> <i>with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.</i>” • As per section 34 of Real Estate (Regulation and Development) Act, 2016 functions performed by RERA include:

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>Fund and all the penalties get credited to the consolidated funds of the states.</p> <ul style="list-style-type: none"> The statutory function of regulating the real estate development and construction of the building entrusted to the RERA falls squarely under Entry No.1 and 2 of the Twelfth Schedule of the Indian constitution read with Article 243W, as below: <ul style="list-style-type: none"> Urban planning and town planning; Regulation of land-use and construction of buildings. Services by Central Government, State Government, Union territory, local authority, or a governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the constitution is exempt from levy of GST vide entry 4 of the notification No.12/2017-CTR. <p>Certain CGST authorities in a few states have initiated proceedings to assess GST liability on RERA's statutory collections. This has raised concerns among the association members, who are entities regulated under the Central Act. No. 16 of 2016.</p>	<p><i>“(a) to register and regulate real estate projects and real estate agents registered under this Act;</i></p> <p>...</p> <p><i>(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder”</i></p> <ul style="list-style-type: none"> RERA has claimed that their statutory function of regulating the real estate development and construction of the building entrusted to the RERA falls squarely under Entry No.1 and 2 of the Twelfth Schedule of the Indian constitution. S. No. 1 and 2 of the 12th Schedule of the Constitution reads as under: <ul style="list-style-type: none"> Urban planning and town planning; Regulation of land use and construction of buildings. From the RERA Act, 2016 it is observed that RERA does not perform the functions of urban planning and town planning and thus their activities do not fall in Sl. No. 1 of the 12th Schedule. As for regulation of land use under Sl. No. 2 of 12th Schedule of the Constitution, it involves dividing land within a local jurisdiction into districts, specifying which uses are permitted or prohibited in each district, and establishing standards to govern each use. RERA does not perform these functions of regulation of land use. It also does not regulate

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<p>the construction of buildings as well. Regulation of construction of building by local bodies involves activities such as, approving building plans, providing TDR/FSI, fire safety norms, commercial/residential usage. Etc.</p> <ul style="list-style-type: none"> • In view of the above, RERA cannot be said to be performing any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution. • Function of RERA is to protect the interests of the buyers/investors and bringing financial discipline in a real estate project. • Accordingly, the Fitment Committee recommended to maintain status quo.
7.	The State of Punjab has sent a proposal for levy of GST on renting of commercial property on RCM basis	<ul style="list-style-type: none"> • Renting out an immovable property is treated as a supply of services. GST is applicable on certain types of services such as: <ul style="list-style-type: none"> ▪ When a property is given out on lease, rent, easement or licensed to occupy; ▪ When any property is leased out including a commercial, industrial, or residential property for business. • GST @18% is applicable on the renting income. However, vide notification no. 12/2017-Central Tax (Rate) dated 28th June 2017, services by way of renting of residential dwelling for use as a residence are exempted from GST. • The GST Council in its 47th meeting had recommended that renting of residential 	<ul style="list-style-type: none"> • Currently, vide entry 12 of the notification No. 12/2017 dated 28.06.2017, renting of residential dwelling for use as residence is exempt from GST except when it is rented to a registered person, in which case it is taxed under RCM. • Services by way of renting of immovable property (other renting of residential dwelling to a registered person for use as residence) is taxable on forward charge basis (except renting of immovable property by Government and Local Authority to a registered person). • Taxing renting of commercial spaces under RCM like renting of residential dwelling is taxed, is not feasible. The two are not comparable. In case of renting of residential dwelling, GST under RCM is required to be paid only by a registered person. However, if renting of commercial property is taxed under RCM, unregistered tenants will also have to

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>property to a registered person would be subject to GST on reverse charge basis. Accordingly, notification no. 05/2022- Central Tax (Rate) dated 13th July 2022 has been issued whereby service by way of renting of residential dwelling to a registered person has been brought under reverse charge and tax is to be paid by the registered person who is taking the said dwelling on rent.</p> <ul style="list-style-type: none"> • This implies that even if the rent of the said property is less than Rs. 20 lakhs (threshold for registration) it would be subject to GST. Further, GST is applicable @ 18% under forward charge on renting of commercial property. • In case of renting of commercial property, only registered person is subject to payment of tax. However, where the person providing service of renting of commercial property is unregistered (on account of threshold for registration) no GST is applicable. • A number of instances have been noticed by the field formations where the rent or lease deed of value less than Rs 20 lakhs is being prepared by the property owners in order to avoid payment of GST, though actual rent is above the threshold value of registration for services under GST i.e. Rs 20 lakh per annum. 	<p>pay tax under RCM and will have to take registration for that purpose.</p> <ul style="list-style-type: none"> • It will also block ITC of the supplier. • Moreover, it shall shift the compliance burden from supplier of commercial spaces (owners of commercial building, malls, market complexes, office buildings) to small businesses- registered and unregistered. • The issue raised by the State of Punjab appears to be more of an enforcement. Issue. • The solution proposed will shift enforcement/ compliance concerns from the supplier to the recipient side. It will be difficult to monitor the compliance by the large number of unregistered recipients of commercial spaces. • Fitment Committee recommended no change is required in the existing provisions.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<ul style="list-style-type: none"> • Further, one property or commercial unit is registered in the name of individual family members so that rental income is divided in them and GST payment is avoided. • In light of the above, it is proposed that renting or leasing of commercial property to registered person may be subject to tax on reverse charge basis in order to plug the leakage of revenue. • Thus, it is proposed that where the service by way of renting of commercial property to a registered person is provided the same should be subject to RCM. This would not only plug the loopholes as detailed earlier but also would bring parity in the taxation of service of renting of commercial or residential property to registered person. • Since the availment of Input Tax Credit on immovable property or construction is already barred by the provisions of sub-section (5) of section 17 of the GST Act, there is not expected to be much of ITC blocking for such taxpayers as beyond the extant regime. 	

f) **Issues deferred by the Fitment Committee for further examination in relation to services**

Annexure-VI

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
1.	To clarify that Flying Training Organizations (FTOs) approved by DGCA are educational institutions under GST and consequently GST is not applicable on the courses conducted by them.	<p>It has been submitted by National Flying Training Institute Private Limited that it is approved by DGCA to conduct flying training to pilots. DGCA fully controls such training institutes by prescribing syllabus, number of seats per session, conduct of examination. It issues a Course Completion Certificate and On Job Training certificate to candidates. Course completion certificate is approved by DGCA.</p> <p>Thus, NFTI should be considered as an educational institution and the educational courses and certificates issued by it for obtaining commercial pilot license should be considered as education recognized under law. Circular No. 117/36/2019-GST dated 11.10.2019 clarified that</p>	<ul style="list-style-type: none"> Services supplied by educational institutions to students are exempt from GST vide entry 66 of the Notification No. 12/2017-CT(Rate), dated 28th June, 2017. "Educational Institution" means an institution providing services by way of: <ul style="list-style-type: none"> i. Pre-school education and education up to higher secondary school or equivalent, ii. Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force, iii. Education as a part of an approved vocational education course. Based on the recommendation of GST Council in the 37th Meeting held on 20th September, 2019, it has been clarified vide Circular No. 117/36/2019-GST dated 11.10.2019 that the maritime training institutes are educational institutions and the courses conducted by them are exempt from levy of GST. Flying training institutes have also requested for a similar clarification in respect of flying training imparted by them. The matter was discussed by the Fitment Committee and it was recommended that the issue may be referred to the GoM on rate rationalisation as decided in the 48th GST Council meeting. May be deferred.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.	
2.	Exemption of GST payable on premium amount for long-term leases of 30 years and above executed by Government owned Institutions/ Industrial Development Corporations/ Undertakings.	The Madhya Pradesh Tourism Development Corporation (MPTDC) – grants long term leases of land for a period of 30 to 90 years to investors willing to invest in tourism related projects in the state. Such leases are currently not being considered within the exemption as the land in question does not lie within Industrial areas and the projects cannot be strictly termed as “Infrastructure development projects for Financial Business”. Thus, it is proposed that Entry No 41 of the notification No. 12/2017- CT(R) be amended as follows:- “Upfront amount(called as Premium, Salami, cost, price, development charges or by any other name) In	<ul style="list-style-type: none"> • The matter is pending with GoM on Real Estate. • It was deferred in 45th GST Council held on 17.09.2021 • The matter may be deferred.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		respect of service by the way of granting of long-term lease of 30 years or more of plots for development of infrastructure for industry and for financial or other business, provided by the State Government Industrial Development Corporation or Undertaking or by any other entity having 20% or more ownership of Central Government, State Government, Union Territory to the industrial units or the developer.”	
3.	Exemption on the redevelopment of buildings in own co-operative housing society on ownership basis in Abhyuday Nagar, Mumbai	<p>It has been decided to re-develop Abhyuday Nagar Co-operative Housing Societies Ltd. having 48 buildings and to allot occupants of these buildings their own houses on ownership basis.</p> <p>It is claimed that there is no clarity on the GST applicable on the cost of the new alternate permanent accommodation to be provided to</p>	<ul style="list-style-type: none"> • The matter is pending with GoM on Real Estate. • It was deferred in 45th GST Council held on 17.09.2021 • The matter may be deferred.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		occupants. Earlier at the time of VAT such alternate permanent accommodation were exempted from VAT but due to GST this process of redevelopment is getting delayed.	
4.	Proposal to exempt the supply of construction services provided by the Co-operative Housing Society to its members.	<p>The Co-operative Housing Societies just reimburse the expenses incurred for procuring goods and services for construction purpose. In some cases, the Co-operative Housing Societies collect advance payment from members as per agreed term and conditions to meet the expenses to be incurred for construction of residential real estate property for the members.</p> <p>So, ideally there is no value addition when a Co-operative Housing Society is subsequently supplying of goods and services to the members.</p> <p>But, the Co-</p>	<ul style="list-style-type: none"> • The matter is pending with GoM on Real Estate. • It was deferred in 45th GST Council held on 17.09.2021 • The matter may be deferred.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		operative Housing Society is liable to take registration since; it is providing taxable supplies to members in relation to construction of residential real estate property for the members.	
5.	Services provided by Central Government or State Government or Governmental Authority by way of granting of long term lease (exceeding 30 years) should be exempted from GST.	<p>It was believed that the services provided by the Central State Government or State Government or Local Authority or Governmental authority in form of long term lease of land of industrial plots or plots for development of infrastructure for financial business are already exempt in GST.</p> <p>Entry No. 41 of notification No. 12/2017 – Central Tax (Rate) dt 28.06.2017 exempts grant of long-term lease of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or</p>	<ul style="list-style-type: none"> • The matter was deferred in the 43rd GST Council held on 28th May, 2021. • The matter was examined in the Fitment Committee and it was recommended that the matter may be referred to the GoM on real estate for examination, as it is closely related to the issues already before the GoM. • The matter may be deferred.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>Undertakings or by any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.</p> <p>Therefore, where the ownership of Government is 100%, no tax is leviable.</p> <p>However, recently Gujarat Authority for Advance Ruling held that one time long term lease premium payable/paid by the Jinmangal Corporation to Ahmedabad Urban Development Authority is taxable supply.</p> <p>In this regard: (a) it may be clarified that tax shall not be leviable on services provided by the Central State Government or State</p>	

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		Government or Local Authority or Governmental authority in form of long term lease of land of industrial plots or plots for development of infrastructure for financial business; or (b) the issue may be deliberated afresh.	
6.	To clarify the nature and taxability of various supplies in relation to crypto eco-system.		<ul style="list-style-type: none"> The GST Council, in its 47th meeting held on 28-29 June 2022 and in its 48th meeting held on 17 December 2022, has deferred the issues regarding the nature and taxability, of various supplies in relation to the crypto eco-system. It was felt that the issues involved in crypto ecosystem need deeper study. It was decided that Haryana and Karnataka shall study all aspects and submit a paper before the Fitment Committee in due course. Both Haryana and Karnataka expressed their inability to submit the paper. The matter was deliberated in the Fitment Committee. It was agreed that TRU may study the issue and submit a paper. The matter may be deferred.
7.	Harmonisation of GST Rate Schedule on Services and the Classification of Services adopted for GST		<ul style="list-style-type: none"> In GST, a Scheme of Classification of services has been adopted. This classification of services is a modified version of UN CPC (UN Central Product Classification of Goods and Services). While UN CPC has a 5-digit classification, the classification adopted for GST is a 4-digit classification with digits 99 pre-fixed to indicate that these are services. As per Notification No. 12/2017-Central Tax dated 28.06.2017, as amended by Notification No. 78/2020-Central Tax dated 15.10.2020, taxpayers having turnover up to Rs. 5 Crore in the previous financial year are required to declare classification of services at a 4-digit level and

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<p>those having turnover above Rs. 5 Crore at a 6-digit level.</p> <ul style="list-style-type: none"> • However, currently the GST rate schedule for services does not mention the classification of services at the 6-digit level. • The GST rate schedule follows classification of services only up to 4-digit level. Further sub-categorization of services in the GST rate schedule is at complete divergence with the Classification of Services adapted for GST. • In the GST rate schedule, sub-categorization of services beyond the 4-digit level has been carried out only for those services, on which a rate lower or higher than the standard rate of 18% was to be prescribed. This sub-categorization in the rate schedule has been done on the basis of the description of such services, without mentioning the 6 digit-level classification, and such sub-categories have been numbered as (i), (ii), (iii) and so on under each 4-digit heading. Therefore, in effect, the GST rate schedule operates at a 2 digit-level of classification (the first two digits, namely '99' (only denoting that it is a service) rendering impossible any meaningful analysis of revenue foregone, ITC availment etc. • The taxpayers are required to declare in the invoice/GST returns not the Sl. No. of GST Rate Schedule under which they have paid GST but the 6-digit classification of services in the Scheme of Classification annexed to the Rate Schedule. As a result, data of services for which a concessional rate of 5% or 12% or a higher rate of 28% has been notified is not captured. • A revised rate schedule of services which is a synthesis of the current rate schedule with the classification of services has been prepared with a view to promote ease of doing business and to ensure better collection of data. • This data – the value of services, GST collected, GST paid in cash and through credit – which is very important for policy formulation - for assessing revenue forgone, the potential impact on revenue of any change in GST rate, extent of

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<p>inversion and credit accumulation etc. is currently not available to the tax authorities.</p> <ul style="list-style-type: none"> Fitment Committee recommended that the draft revised rate schedule of services at 6-digit level of classification may be circulated to all states for comments, after which the same may be examined by Fitment Committee/sub-committee of Fitment Committee in light of suggestions/feedback received from the States. The same shall then be placed before the GST Council for approval. Once approved, it shall be placed in the public domain and implemented after incorporating any changes required therein in view of the feedback received and after a drop-down mechanism for selecting 6-digit classification of services is made available in GSTN portal. May be deferred.
8.	Request to clarify whether GST is applicable on charges/fees like FSI paid by builders to local authorities under RCM.	<ul style="list-style-type: none"> In construction industry, all builders & developers pay various charges to local municipal authorities in the form of FSI premium, road permission charges, scrutiny fees, liasoning fees, staircase premium, water charges, sewerage charges etc. Some of the taxpayers have contended that the said services are exempt 	<ul style="list-style-type: none"> Municipalities collect various charges such as FSI premium, road permission charges, scrutiny fees, liasoning fees, staircase premium, lift NOC charges, fire NOC charges, sewerage charges, charges for change of land use etc for different services supplied to builders/developers. FSI premium is the consideration paid by builders for obtaining additional FSI over and above the base FSI from the Local Authorities. Base FSI is the basic FSI permitted by the competent authority as a matter of right without any cost. Additional/ chargeable/premium FSI is the FSI that can be obtained by making additional payment to the competent authority as per the applicable rules. Maximum permissible FSI is the FSI that includes the base and chargeable FSI. [Max Permissible FSI= Base FSI+ Chargeable/Premium FSI]

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>under notification 12/2017-CT(R) dated 28.06.2017.</p> <ul style="list-style-type: none"> • Floor Space Index (FSI) is defined as the maximum permitted floor area that a developer can build or construct on any given plot or piece of land area. In other words, it is a measure of the intensity of land utilization in a given area. • As per the information received, Rajkot Municipal Corporation has granted FSI of Rs. 543.24 Cr since inception of the GST Act. In a small city like Rajkot, local municipal corporation has collected a handsome amount towards grant of FSI within span of just six years. In the big metro city like 	<ul style="list-style-type: none"> • During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination. • The Fitment Committee recommended that the matter may be deferred.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>Ahmedabad, Surat and Baroda, handsome amount is being collected towards grant of FSI.</p> <p>View of Promoter - Transactions may be considered as neither a supply of goods nor a supply of service:</p> <ul style="list-style-type: none"> As per the Notification No. 14/2017-Central Tax (Rate), activities or transactions undertaken by any local authority by way of any activity in relation to a function entrusted to a Municipality under article 243W of the Constitution shall be treated neither as a supply of goods nor a supply of service. As per Article 243W, certain responsibilities are conferred upon them 	

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>including those listed in the XIIth Schedule. Sr. No. 1 & 2 of Schedule XII of the Constitution of India deal with "Urban planning including town planning" and "Planning of land-use and construction of buildings" respectively. These functions are entrusted to Municipality under Article 243W of the Constitution.</p> <ul style="list-style-type: none"> As per the representation sale or grant of FSI against collection of fees is also part of the said two functions only. Therefor GST is not payable on supply of FSI by municipal corporation to the registered person. <p>Views of Tax authority:</p> <ul style="list-style-type: none"> Supply of FSI against collection of fees is not integral part of 	

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>"town planning". Transaction of supply of FSI by the RMC to the taxpayer is merely a commercial activity. Performance or non-performance of "town planning work" has no nexus with activity per se the supply of FSI, which is entirely independent to each other. Supply of FSI to the business entity serves the only purpose of generating revenue for local authority.</p> <ul style="list-style-type: none"> • In the Notification No. 14/2017 ST (Rate), the phrase "Services by way of any activity in relation to a function entrusted to a Municipality under article 243W of the Constitution" does not mean "Commercial activities under consideration". 	

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>Thus, the said activity in form of the supply of FSI against charging fees by RMC being an independent taxable supply of services, would not be qualified for and could not be treated as "No Supply of Services".</p> <ul style="list-style-type: none"> • Further, as per entry-16 (iii) in Notification No. 11/2017 state tax (rate) read with entry-5 in Notification No. 13/2017 state tax (rate), tax under RCM is payable by the taxpayer as recipient of services. 	

रजिस्ट्री सं. डी.एल.- 33004/99

REGD. No. D. L.-33004/99



भारत का राजपत्र The Gazette of India

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असाधारण
EXTRAORDINARY
भाग I—खण्ड 1
PART I—Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 201] नई दिल्ली, शुक्रवार, अगस्त 18, 2023/श्रावण 27, 1945
No. 201] NEW DELHI, FRIDAY, AUGUST 18, 2023/SHRAVANA 27, 1945

वाणिज्य एवं उद्योग मंत्रालय
(वाणिज्य विभाग)
(विदेश व्यापार महानिदेशालय)
सार्वजनिक सूचना
नई दिल्ली, 18 अगस्त, 2023

सं. 28/2023

विषय: प्रक्रिया पुस्तक, 2023 के परिशिष्ट 4ख में संशोधन के संबंध में।

फा. सं. 01/94/180/261/एम18/पीसी-4.—समय-समय पर यथा संशोधित विदेश व्यापार नीति (एफटीपी), 2023 के पैरा 1.03 और 2.04 के तहत प्रदत्त शक्तियों का प्रयोग करते हुए, महानिदेशक, विदेश व्यापार एतद्वारा प्रक्रिया पुस्तक, 2023 के परिशिष्ट 4ख के तहत भाग क और ख में निम्नलिखित संशोधन करते हैं:

क. वित्तीय वर्ष 2023-24 के लिए सोना और चांदी, दोनों के आयात हेतु भारतीय रिजर्व बैंक द्वारा प्राधिकृत बैंकों की सूची, 31 मार्च 2024 तक वैध।

1.	एक्सिस बैंक लिमिटेड
2.	बैंक ऑफ इंडिया
3.	फेडरल बैंक लिमिटेड

5320 GB/2023

(1)

4.	एचडीएफसी बैंक लिमिटेड
5.	इन्डस्ट्रियल एंड कमर्शियल बैंक ऑफ चाइना लिमिटेड
6.	आईसीआईसीआई बैंक लिमिटेड
7.	इंडसइंड बैंक लिमिटेड
8.	इंडियन ओवरसीज बैंक
9.	कोटक महिन्द्रा बैंक लिमिटेड
10.	करूर वैश्य बैंक लिमिटेड
11.	पंजाब नेशनल बैंक
12.	आरबीएल बैंक लिमिटेड
13.	भारतीय स्टेट बैंक
14.	यूनियन बैंक ऑफ इंडिया
15.	यस बैंक लिमिटेड

ख. वित्तीय वर्ष 2023-24 के लिए केवल सोने के आयात हेतु भारतीय रिज़र्व बैंक द्वारा प्राधिकृत बैंकों की सूची, 31 मार्च 2024 तक वैध।

1.	बैंक ऑफ बड़ौदा
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इस सार्वजनिक सूचना का प्रभाव: प्रक्रिया पुस्तक, 2023 के परिशिष्ट 4ख के तहत सोने/चांदी के आयात हेतु प्राधिकृत बैंकों की सूची को अद्यतित किया गया है।

संतोष कुमार सारंगी, महानिदेशक विदेश व्यापार एवं
पदेन अपर सचिव

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)
(DIRECTORATE GENERAL OF FOREIGN TRADE)
PUBLIC NOTICE

New Delhi, the 18th August, 2023

No. 28/2023

Subject:- Amendment in Appendix 4B of Handbook of Procedures, 2023-reg.

F. No. 01/94/180/261/AM18/PC-4.—In exercise of the powers conferred under paragraph 1.03 & 2.04 of the Foreign Trade Policy (FTP), 2023, as amended from time to time, the Director General of Foreign Trade hereby makes the following amendments in Part A and B under Appendix 4B of Handbook of Procedure, 2023:

A. LIST OF BANKS AUTHORISED BY RESERVE BANK OF INDIA TO IMPORT BOTH GOLD AND SILVER FOR FY 2023-24 VALID UPTO MARCH 31, 2024

1.	Axis Bank Limited
2.	Bank of India
3.	Federal Bank Limited
4.	HDFC Bank Limited
5.	Industrial and Commercial Bank of China Limited
6.	ICICI Bank Limited
7.	IndusInd Bank Limited
8.	Indian Overseas Bank

9.	Kotak Mahindra Bank Limited
10.	Karur Vysya Bank Limited
11.	Punjab National Bank
12.	RBL Bank Limited
13.	State Bank of India
14.	Union Bank of India
15.	Yes Bank Limited

B. LIST OF BANKS AUTHORISED BY RESERVE BANK OF INDIA TO IMPORT ONLY GOLD FOR FY 2023-24 VALID UPTO MARCH 31, 2024

1.	Bank of Baroda
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Effect of this Public Notice:

List of banks authorised to import gold/silver under Appendix 4B of Handbook of Procedures, 2023 has been updated.

SANTOSH KUMAR SARANGI, Director General of Foreign Trade
Ex-officio Addl. Secy.

W.P.(MD) Nos.12955 and 13043 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2023

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.(MD) Nos.12955 and 13043 of 2023

and

W.M.P.(MD) No.11040 of 2023

W.P.(MD) No.12955 of 2023:-

Carunia Seelavathi

... Petitioner

/vs./

1.The Secretary to the Government of Tamil Nadu,
Department of Transport,
Fort St.George,
Chennai 600 009.

2.The Transport Commissioner,
Transport Department,
Chepauk,
Chennai 600 005.

3.The Deputy Transport Commissioner,
Regional Transport Office,
Tirunelveli,
No.111, NGO B Colony,
Palayamkottai 627 707,
Tirunelveli District.

4.The District Collector,
District Collector Office,
Tirunelveli District.

5.The Regional Transport Officer,
Regional Transport Office
Tirunelveli,
No.111, NGO B Colony,
Palayamkottai 627 707,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 5th respondent vide office proceedings in Na.Ka. No.19154/A3-2023 dated 21.04.2023 and quash the same as illegal and consequently direct the respondents to register the petitioner's new car namely TATA NEXON XE (Petrol) and to grant exemption of Tax to the Physically disabled as per G.O.Ms.No.3352 dated 29.12.1976 within a time period stipulated by this Court.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.D.Ghandiraj
Special Government Pleader

W.P.(MD) No.13043 of 2023:-

Carunia Seelavathi

... Petitioner

/vs./

- 1.The Union of India,
represented by its Secretary,
Department of Heavy Industry
Ministry of Heavy Industries and Public Enterprises,
Block No.14 CGO Complex,
Lodhi Road,
New Delhi 110 003.
- 2.The Union of India,
represented by its Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.
- 3.The Union of India,
represented by its Secretary,
Department of Empowerment of Persons with Disabilities,
Ministry of Social Justice and Empowerment,
Antyodaya Bhawan,
New Delhi 110 003.
- 4.The Union of India,
represented by its under Secretary,
AEI Division Section
Department of Heavy Industry
Ministry of Heavy Industries and Public Enterprises,
No.428, Udyog Bhawan,
New Delhi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned email communication dated 04.05.2023 vide his proceedings in

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registration application MHI- 290423185541-6629 sent by the 4th respondent and quash the same as illegal and consequently for a direction, directing the respondent No.1 to extent the GST, Road Tax, Tool Tax and registration concession to the petitioner for purchasing a four wheeler (TATA NEXON XE-Car (Petrol) Derik Motors Private Limited) in the light of the orders passed by the Honble Court of Chief Commissioner for persons with Disabilities (Divyangjan) in Case No.12149/1141/2020 dated 01.12.2020.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.S.Ponsenthil Kumaran
Senior Panel Counsel

COMMON ORDER

The relief is sought for on the basis of the order passed by the Court of Chief Commissioner for Persons with Disabilities (Divyangjan) New Delhi in Case No.12149/1141/2020 dated 01.12.2020 and the order passed by this Court in W.P.(MD) No.20511 of 2021 dated 22.12.2021.

2.The petitioner, who is visually handicapped and who holds the unique disability identity card showing that she is a person with 100% physical impairment, has planned to purchase a car for her own use. She is dependent on a third person for her travels. Considering the fact that she is a lady and visually

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challenged, travelling in the taxies and autos in the present scenario is a scary choice for the petitioner. Therefore, she would try to take advantage of the Government Order in G.O.Ms.No.3352, Home (Transport-T) Department, dated 29.12.1976, which grants exemptions from payment of tax leviable under the Tamil Nadu Motor Vehicles Taxation Act, 1974 for the motor vehicles designed or adapted for the use of disabled persons. She has also relied upon the aforementioned case of the Court of Chief Commissioner for Persons with Disabilities (Divyangjan) as also the order of this Court in W.P.(MD) No.20511 of 2021 dated 22.12.2021. However, her request has been rejected by the authorities by stating that the vehicle of the petitioner would not undergo any change in its form and it cannot be considered as a adapted vehicle, which is the basis of the exemption. Like wise, the request for exemption of GST has been rejected with the one line order that the scheme is only for ortho/locomotory applicants.

3.Heard the learned counsels appearing on either side.

4.That the petitioner is a person suffering from a disability has not been denied by the respondents. In the order of the Court of the Chief Commissioner

for Persons with Disabilities (Divyangjan) New Delhi, the Commissioner was dealing with cases of various kinds of disabilities, like locomotory, hearing impairment, visually handicapped etc. The Commission has held that a person suffering from complete blindness can never drive the vehicle by himself/herself, which is also the case of hearing impairment. The Commission went on to hold that the person who is visually challenged also belongs to the PwD category (Person with Disability) and the Commission had recommended that the Department of Heavy Industries, Ministry of Heavy Industries and Public Enterprises and Department of Revenue, Ministry of Finance, Union of India should make amendments to their rules to give concession with reference to GST, Road Tax, Toll Tax etc to all these persons. This recommendation of the Commission has been followed by the learned Judge of this Court in the order passed in W.P.(MD) No.20511 of 2021, wherein the learned Judge has relied upon this recommendation and directed the respondents to process the applications at the earliest. This Court on an earlier occasion was dealing with the cases of exemption in respect of the adapted vehicle adapted for the use of a physically challenged person. Relying upon Sections 2(1) and 52(1) of the Act, this Court had directed that the petitioner is entitled to the concession.

5.Considering the recommendation of the Commission, which is a Commission specifically established for the disabled and taking into consideration the fact that today the visually challenged persons are having more opportunities of employment even in the Government sector and their commuting to the place of work becomes challenging, this Court is of the opinion that the exemption has to be granted to the petitioner and accordingly, the Writ Petitions are allowed. The authority concerned shall ensure that necessary orders exempting the petitioner from the motor vehicle's tax as well as the GST are passed within a period of four weeks from the date of receipt of a undertaking letter by the petitioner. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

26.06.2023

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To

- 1.The Secretary to the Government of Tamil Nadu,
Department of Transport,
Fort St.George,
Chennai 600 009.
- 2.The Transport Commissioner,
Transport Department,
Chepauk,
Chennai 600 005.
- 3.The Deputy Transport Commissioner,
Regional Transport Office,
Tirunelveli,
No.111, NGO B Colony,
Palayamkottai 627 707,
Tirunelveli District.
- 4.The District Collector,
District Collector Office,
Tirunelveli District.
- 5.The Regional Transport Officer,
Regional Transport Office
Tirunelveli,
No.111, NGO B Colony,
Palayamkottai 627 707,
Tirunelveli District.

W.P.(MD) Nos.12955 and 13043 of 2023

P.T.ASHA, J.

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W.P.(MD) Nos.12955 and 13043 of 2023

**GOVERNMENT OF ODISHA
FINANCE DEPARTMENT**

No. FIN-CTI-TAX-0030-2023 23474 /F., Date- 21.08.2023

From

Shri Suresh Chandra Tripathy,
Special Secretary to Government

To

Smt. Limatula Yaden,
Joint Secretary (TRU)
Department of Revenue,
Ministry of Finance,
Government of India, New Delhi
Email- gstc.secretariat@gov.in,
l.yaden@gov.in

Sub: Proposal for exemption of GST on the activities undertaken and services supplied by the District Mineral Foundations (DMF) of Odisha.

Ref: Your Office letter No. CBIC-190354/207/2021-TO(TRU-II)-CBEC dated 24.11.2021, 16.02.2022, 18.07.2022, 19.05.2023 and 01.06.2023 and CBIC-190354/9/2023-TO (TRU-II)-CBEC dated 01.08.2023.

Dear Madam,

I would like to draw your kind attention to the letter No. CBIC-190354/207/2021-TO(TRU-II)-CBEC dated 24.11.2021 received from Tax Research Unit, Department of Revenue, Ministry of Finance, Government of India wherein information on nature of activities undertaken and services supplied by DMF were sought for among other information. Point-wise compliance with respect to the information as sought for therein, is presented hereunder for better appreciation of the Fitment Committee.

(a) The exact description of services supplied by DMF

District Mineral Foundation (DMF) Fund of the District is an extra-budgetary resource to be utilized for the interest and benefits of the mining affected people and areas. Amongst all the extra-budgetary sources available like- Compensatory Afforestation Fund Management and Planning Authority (CAMPA), Odisha Mineral Bearing Areas Development Corporation (OMBADC), Odisha State Agriculture Marketing (OSAM) Board, Building & Other Construction Workers Welfare Board etc., the quantum of funds likely to be made available under DMF assumes significance for development of the areas and people affected by mining in the concerned Districts due to the volume of resources, magnitude of outreach and investment/ interventions touching lives and livelihoods of people and areas affected by negative externalities of mining related operations.

As per the provisions of sub-section (1) of Section-9B of the Mines and Mineral (Development and Regulation) (MMDR) Act, 1957, the State Government shall notify the establishment of District Mineral Foundation in every District in the country affected by mining related operations. Sub-section (3) of Section-9B of the MMDR Act says that the rules for the functioning of the District Mineral Foundations are to be prescribed by the State Governments. The Government of India have also issued Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY) Guidelines to be implemented by DMFs.

Accordingly, Odisha has framed the Odisha District Mineral Foundation Rules, 2015 under the provisions of Section 9B of the MMDR Act, 1957 with effect from 12th January, 2015. The Guidelines on Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY) has been incorporated in the said Rules. DMF Trusts have been constituted in all the districts of the State to implement various developmental and welfare programmes in mining affected areas to minimize and mitigate the adverse impacts during and after mining on the environment, health and socio-economic conditions of the people in mining affected areas to ensure long term sustainable livelihood of the affected people. DMF Trusts with approval from DMF Trust Board take up permissible activities directly and indirectly in mining affected areas.

The '**High Priority**' activities undertaken by DMF include Drinking water supply, Environment Preservation and Pollution Control measures, Health care, Education, Welfare of Women and Children, Skill development, Sanitation, Housing, livelihood and Road Connectivity. Similarly, '**Other Priority**' activities of DMF include Physical infrastructure, Irrigation, Energy and Watershed Development and Afforestation.

These projects / activities are generally implemented by different Line Departments of the Government, PSUs and reputed eligible institutions. The benefits of such activities are reaching directly to the people of mining affected areas of the districts.

The "Local Authority" defined u/s 2(69) of the CGST/SGST Act includes among others, a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund. The DMFs are constituted by the Government under a statute to implement various developmental and welfare projects akin to the work entrusted to Panchayat & Municipality enlisted in Eleventh Schedule (Article 243G) and Twelfth Schedule (Article 243W) of the Constitution of India in mining affected areas.

The aforementioned 'High Priority' and 'Other Priority' activities are similar to activities that are enlisted in Eleventh Schedule (Article 243G) and Twelfth Schedule (Article 243W) of the Indian Constitution.

(b) Their classification under scheme of classification annexed to notification No. 11/2017-CTR dated 28.06.2017

The Developmental activities / projects taken up out of DMF fund includes infrastructural support, soft interventions, manpower engagement, procurement of equipment, goods & services, etc. under different sectors. Indicative details of such activities are enumerated below:

- i. Provision for supply of safe and adequate drinking water to household is made through tube wells, solar powered piped water supply and mega piped water supply projects etc. Installation of Iron Removal Plant (IRP) in Hand pump Tubewell and borewell are also taken up.

- ii. Adequate & modern infrastructural support for development of DHH, CHCs & PHCs, supply of modern medical equipment, instruments & furniture, deployment of technical resources like Doctors/Specialists, clinical staffs/paramedics, Establishment of Chemotherapy Centre at DHH, Construction of Toilet Complex, deployment of ASHA Workers, Financial Support to Haemoglobinopathy, accident, destitute & BPL patients, Maa Gruhas in affected areas for maternal and child care, COVID –19 management etc. are the major interventions. Running of Mobile Health Units (MHUs) help in providing primary health care services in the unreachable areas. A dedicated Medical College has been setup in Keonjhar District of Odisha under DMF which has become operational since 2022-23.
- iii. Under Education sector, activities are taken up for transformation of high schools , infrastructural support to upper primary and primary schools. Students are benefited by availing adequate infrastructure, additional class rooms, science laboratory, Smart Class Room, Hostel, Boundary wall, Dining Hall, kitchen room, E-Library, toilets, cycle stand, play ground with sports kit, capacity buildings of teachers, provision of additional MDM, additional teachers, provision of conveyance supports to students of mining affected areas etc. Such initiatives result in increasing enrolments in Government schools as well as improvement in examination results.
- iv. AWCs have been constructed to ensure nutritional support to children of mining affected areas. Creches are taken up in some Districts for the small children, whose parents are going out for work in the mines or to any site for gainful employment during the day time.
- v. Old age home, rescue / rehabilitation centre for vulnerable/ destitute, mentally ill person, mentally challenged women, Child Care Institution for homeless children, distribution of additional Spiriluna Chikki for Children of 3-6 years malnourished children are provided. Advance Rehabilitation Centres (ARC) for providing artificial limbs to the physically challenged persons are running to address the issue of aged and disabled belongs to mining affected areas.
- vi. Skill development trainings, job readiness programme like various skill sets required for mining sector, plastic moulding, plastic segregation training, tailoring, Construction of Skill Development Centers, Tribal Skill Development centers, Women skill development centers, Sponsoring of Meritorious students from economically weaker section for availing free medical coaching of mining affected areas, refresher training of HMV drivers, skill development programme for Recognition to prior learning (RPL) and Short-Term programme(STP) for mining Specific job roles. etc.
- vii. Various livelihoods interventions like inclusion of agriculture production cluster, promotion of millets, in which farmers will be benefitted directly for enhancement of their livelihoods through farm interventions. Other individual livelihoods promotion activities are also taken up through SHGs / individual beneficiaries to address the livelihoods promotion. Assistance to Horticultural activities, Fisheries activities and Agricultural activities under Rabi season, supply of subsidized PP Equipment to the farmers, supply of honey box, iron stand, honey extractor, smoker, gloves for bee keeping, establishment of kitchen gardens for group of families, engagement of skilled paravets, additional wages paid to job seekers of the district under MGNREGS, development of guava orchard in horticulture farm, renovation of ponds for pisciculture, assistance in income generation activities for district and block level federations, training programme for establishment of Spawn unit for pisciculture, construction of boundary wall, construction of wholesale market, Mission Shakti Café, revival of Tasar sericulture and livelihood enhancement of Tasar rearers of the district are few of the other interventions.
- viii. Roads & bridges, construction/ improvement of CC Road, retaining walls, Road Over Bridge (ROB) and culverts as well as widening and strengthening of roads are taken up

- out of DMF fund for which villages are connected and benefitted for smooth and safe communication.
- ix. Under irrigation sector irrigation projects like- Lift irrigation, Mega Lift irrigation projects, improvement and renovation of MIPs, excavation/renovation of farm pond, irrigation channel, water reservoirs, check dam, guard wall, diversion weir, installation of transformer are taken up.
 - x. Construction of sewerage systems, drainage, drain with culvert, waste disposal plants and public toilets, etc.
 - xi. Housing scheme for the mining affected families, construction of settlement colony for Tribal people are taken up.
 - xii. Afforestation, renovation of water bodies, provision of urban plantation, avenue plantation, block plantation, bald hill plantation, raising seedlings, raising seedlings, installation of incinerator, ecological management of dumping yard site through bio mining process, treatment of sewage water drain, Geo Tagging of Households for implementation of ICT based smart SWM, development of urban forest, development of medicinal garden are taken up for preservation of environment and pollution control.

'High Priority' and 'Other Priority' activities as indicated above are similar to activities that are enlisted in Eleventh Schedule (Article 243G) and Twelfth Schedule (Article 243W) of the Indian Constitution. Rule 11A of the Odisha DMF Rules emphasizes that effort shall be made to supplement and work in convergence with existing infrastructure of local bodies and complementing the ongoing schemes being funded by State as well as Central Government. Members of PRIs /ULBs are also the members of Board of Trustee along with Officers of District Administration, Local Public Representatives for overall functioning of the DMF Trust. However, it is not feasible to classify each and every item under the banner of High Priorities and other priorities activities undertaken by DMF.

(c) The persons to whom the services are supplied

Most of these activities are implemented by Government Line Departments. Some of these services are being implemented through various NGOs, PSUs, Private organizations which are being selected through tendering process.

The ultimate users or beneficiaries of various schemes under DMF are individuals, families, children of affected area schools, women & children, farmers/ producer Groups, SHGs etc. of the mining affected areas- mostly living in rural and urban areas. The very objective for taking up such projects out of DMF fund is overall development of the directly and indirectly mining affected people and areas to reduce the negative externalities of mining related operations on the lives, livelihood and environment with reference to the PMKKKY / ODMF Rules 2015.

(d) Whether they are supplied free of charge or against consideration

The services / supplies out of DMF Fund are provided free of charge to the ultimate beneficiaries and no considerations is realised from the beneficiaries by DMF against such services. The objective of utilization of DMF fund is welfare of community at large and wellbeing of people affected by mining activities. People residing in direct and indirect Mining affected areas are provided with the benefits as prescribed in Odisha DMF Rules, 2015 and Prime Minister Khanij Kshetra Kalyan Yojana (PMKKKY) Guidelines.

(e) Value of supplies during the last 2 years and tax paid by DMF

As per the information available from the Administrative Department, the value of supplies (goods and services) and GST paid thereof against various projects (approximate figure) implemented in last 2 years (2021-22 to 2022-23) under different sectors by Implementing Agencies for major eight Districts (where 99% of the DMF fund is accrued or allocated for various projects and spent on projects/schemes) is presented in the following table.

Name of the District	Value of goods and services supplied by implementing Agencies (Rs in crore)	GST paid (Rs in Crore)
Angul	353.49	41.04
Jajpur	446.80	47.87
Jharsuguda	865.73	79.78
Keonjhar	1500.00	180.00
Sundergarh	3412.83	409.50
Koraput	87.00	15.00
Mayurbhanj	18.94	3.02
Rayagada	0.29	0.026
Total	6685.08	776.236

(f) Any other details which may be relevant to the issue

As utilization of DMF fund is meant for overall development of mining affected people and areas and to provide public welfare services, levy of GST against procurement of goods & services out of DMF fund has diverted a large portion of the fund from the funds accrued to DMF.

Exemption of GST on DMF spending at each level will enable the DMFs to accommodate/ initiate a greater number of developmental works to address the issues of people affected due to negative externalities of mining related activities and will improve their socio-economic condition. Most of the mining affected areas are inhabited by tribal population in scheduled areas. The interventions through DMFs reach the far-off, rural population, dependent on agrarian and forest economy with a low level of income in the primary sector. Thus, spending of DMF fund which is welfare & entitlement oriented, merits it's exemption from levy of GST for the benefit, interest and welfare of the people affected by mining related operations.

I sincerely hope that the Fitment Committee will consider the proposal for exemption of GST on the activities undertaken and services supplied by the District Mineral Foundation of Odisha favourably as a testimony of progressive thinking in the interest of people in mining affected districts of Odisha. Such a gesture shall result in upliftment of the health and socio-economic condition of the people in mining affected districts ensuring their long term sustainable livelihood.


Special Secretary

Memo. No. 23475 Dated. 21.08.2023

Copy forwarded to the Commissioner of CT&GST, Odisha for information and necessary action.


Joint Secretary

Memo. No. 23476 Dated. 21.08.2023

Copy forwarded to P&C Department for information.


Joint Secretary

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 are primarily 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 recommendation of the Fitment Committee as contained in paragraph 12 was discussed in the 50th GST Council meeting held on 11.07.2023. Punjab sought some more time to study the list comprehensively and requested the Chair to defer the agenda item to be taken up in the next Council Meeting. It was suggested by Karnataka that the exemption entries at 3 and 3A of notification No. 12/2017-CT (R) should continue to cover all the activities specified in the 11th and 12th Schedule of the Constitution and that the words “in relation to” appearing in entry 3 and 3A of Notification No. 12/2017-

CT (R) may be substituted by the words “by way of” to remove difficulties caused by wide interpretation of the phrase “in relation to”. Considering the views of the states of Punjab and Bihar, the Chairperson proposed to defer the agenda item. It was decided that it would be brought before the Council for a decision in the next meeting of the Council.

Agenda Item 5: Performance Report of Competition Commission of India (CCI) along with Performance Reports of State Level Screening Committee (SLSC), Standing Committee (SC) and Directorate General of Anti-Profiteering (DGAP) for 1st quarter of the F.Y 2023-24.

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	
1 st Quarter -April 2023 to June 2023						
170	6	0	0	0	0	176

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 CCI confirming profiteering	Report to CCI for closure action	
1 st Quarter -April 2023 to June 2023					
39*	2	6	6	0	35

* Opening Balance shall differ with the closing balance of previous quarter by 3 as these 3 cases were already concluded by DGAP however Hon'ble High Court granted stay on other products/projects.

- Out of these 35 cases, 31 cases have been stayed by various Hon'ble High Courts.
- One case has been held up as per direction by NAA/CCI.
- Actual pendency of cases in which investigation is under process are 3 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)
1st Quarter - April 2023 to June 2023			
33	11	0	44

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	
1 st Quarter - April 2023 to June 2023				
303**	85	3	291	94

** Since report from the Tamil Nadu State Screening has not been received and report of Andhra Pradesh and Punjab State Level Screening Committee was not received at the material time during the last quarter. Hence closing balance of Quarter ending March 2023 and Opening Balance of Quarter ending June 2023 may differ by 5.

2. During these quarters CCI has undertaken the following activities/initiatives-

- i. A meeting of the Commission was held on 22.06.2023 wherein 12 cases were taken up and necessary directions were given by the Commission. Thereafter, the matters are regularly being taken up by the Commission.
- ii. For the quarter ending on 30.06.2023, out of 27 complaints, 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 and 15 complaints which were 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) along with Performance Reports of SLSC, SC and DGAP on Anti-Profiteering for 1st quarter of the F.Y 2023-24 are placed before the GST Council for information.



Agenda for 52nd GST Council Meeting

07th October, 2023

Volume-II





GST Council Secretariat New Delhi

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
25th September, 2023

OFFICE MEMORANDUM

Subject: Notice for the 52nd Meeting of the GST Council scheduled to be held on 7th October, 2023.

The undersigned is directed to refer to the subject stated above and to convey that the 52nd Meeting of the GST Council will be held on **7th October, 2023** at Delhi. The schedule of the Meeting is as follows:

- **Saturday, 7th October, 2023 : 10:00 A.M. onwards**

2. In addition, an Officers' Meeting will be held on 6th October, 2023 at NDMC Convention Centre, Sansad Marg, New Delhi as per the following schedule:

- **Friday, 6th October, 2023 : 02:30 P.M. onwards**

3. The agenda items and other details for the 52nd Meeting of the GST Council will be communicated in due course of time.

4. Kindly convey the invitation to the Hon'ble Member of the GST Council to attend the 52nd 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. CEO, GST Network

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Discussion on Agenda Items

Errata

Agenda Item 3(vi): Clarification on various issues related to Place of Supply.

- 1) On Page 276 Agenda Item 3(vi) of Volume-I of the agenda for 52nd GST Council Meeting heading **“B. Clarification regarding place of supply for services in respect of advertising sector”** may be read as **“C. Place of supply in case of supply of the “co-location services”**

Agenda Item 4(Part-II): Recommendations of the Fitment Committee for the consideration of the GST Council

Agenda Item 4(Part-II)(i): Agenda on Extra-Neutral Alcohol (ENA)

ENA (Extra Neutral Alcohol), also known as rectified spirit or rectified alcohol, is a high distillate alcohol, free from impurities, typically containing 95% alcohol by volume.

The GST Council, in its 20th meeting held on 5.8.2017, while deliberating upon the matter regarding the taxation of rectified spirit/ ENA under GST, recommended the following:

- a) For the time being status quo should be maintained regarding taxation of ENA for manufacture of alcoholic liquor for human consumption, i.e. ***Extra Neutral Alcohol supplied for industrial purpose shall attract GST at the rate of 18%.***
- b) Opinion of the Attorney General of India may be sought regarding legality of the levy of GST on supply of ENA for manufacture of alcoholic liquor for human consumption.
- c) Representatives of States who wish to participate in briefing to the Ld. AG may also be invited for such briefing.

Accordingly, the matter regarding levy of GST on supply of ENA for manufacture of alcoholic liquor for human consumption within the prevailing constitutional provisions was referred to Ld. Attorney General who opined that the judgment of the Hon'ble Supreme Court in Bihar Distillery does not denude the Centre or the States of the power to levy GST on ENA that is used to manufacture alcoholic liquor for human consumption.

The opinion of Ld. AG was circulated to states and placed as an agenda item before the GST Council in its 26th meeting that was held on 10.3.2018. However, the agenda could not be taken up due to paucity of time. In its 31st meeting held on 22.12.2018, the GST Council agreed to maintain status quo. Further, in its 36th meeting held on 27.7.2019, the GST Council recommended that status quo may be maintained and that states may go by the decision of Council decision as recorded in minutes of the 20th Council meeting. Following this, in the 43rd GST Council meeting held on 28.5.2021, no conclusion could be reached and the agenda was deferred.

Currently, there are varying practices across states with some distilleries discharging GST on ENA and not paying VAT while some distilleries are paying VAT on ENA and not paying GST. There are also some distilleries paying GST @ 18% on ENA cleared for manufacture of 'liquor for human consumption', but not paying any GST on Grain Neutral Spirits (GNS) when supplying to an alcohol bottling unit. In addition, there are multiple litigations pending in various judicial forums. It is imperative to take a decision since litigation is a time-consuming process and certainty must be provided to the industry for ease of doing business.

Currently ENA for industrial use is being taxed at the rate of 18% under residual entry. However, a dedicated tariff line "2207 10 12 – Spirits for industrial use" has been created vide Gazette Notification dated 30th September 2023.

As per 20th GST Council decision, GST rate of 18% will be notified on ENA for industrial (HS 22071012).

It is therefore proposed to seek approval of the GST Council for the following:

- a) To place before Hon'ble Supreme Court that the GST Council has no intent to subject ENA for use in manufacture of alcoholic liquors for human consumption.

- b) In the interim, to exempt ENA (both Grain-based & Molasses-based ENA) from GST when supplied for manufacture of alcoholic liquors. (States will also exempt ENA -both Grain-based & Molasses-based ENA from VAT when supplied for industrial purposes).
- c) To reduce GST on Molasses from 28% to 5%.

Agenda Item 4(Part-II)(ii): Issues deferred by the Fitment Committee for further examination in relation to services and clarification for issues where no change has been proposed by the Fitment Committee in relation to services.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
1	To declare Delhi Development Authority as a Local Authority for the purposes of GST.	<ul style="list-style-type: none"> As per section 2(1)(d) of National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, DDA is “a local authority” established under the Delhi Development Act 1957. Section 3(31) of General Clauses Act 1897 defines a local authority as “local authority” shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund. Supreme Court in the R.C Jain case (1981 AIR 951) has held DDA to be a Local Authority 	<ul style="list-style-type: none"> DDA has claimed status of a Local Authority on the basis of NCT Act 2011 which declares DDA as a local authority and a SC judgment passed in 1981 in the context of liability of DDA to pay bonus to employees. The issue was deliberated in the Fitment Committee and it was felt that the matter requires detailed examination. Hence it may be deferred.
2	(i) 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.	<ul style="list-style-type: none"> The accommodation services under heading 9963 by a hotel, inn, guest house, club or campsite by whatever name called, 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 notification No. 12/2017-CT(R) dated 28.06.2017. Vide the latest amendment notification No. 04/2022-CT(Rate) dated 13.07.2022, 	<ul style="list-style-type: none"> There is no GST on hostel fee or rent collected by educational institutions whether private or Government including schools, colleges, and universities, from students living in their hostels. (Sl. No. 66 of notification No. 12/2017 - CTR). Hostels run privately which do not belong to any educational institutions have to pay GST as applicable.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
	(ii) Request for GST exemption on hostels for poor and middle-class students run by charitable trusts.	<p>the exemption to hotel accommodation having per day charges below Rs. 1000/- has been withdrawn w.e.f. 18/07/2022 and the said supply is now madetaxable at 12% by the notification No. 03/2022-CT (Rate) dated 13.07.2022. Currently, hotel accommodation having value of supply less than or equal to Rs. 7500 per unit per day attracts 12% whereas those having value of supply more than Rs 7500 per unitper day attracts 18%.</p> <ul style="list-style-type: none"> • 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. The said clarification reads as below: <i>Hostel accommodation services do not fall within the ambit of charitable activities as defined in para2(r) of notification No. 12/2017-CT(Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff</i> 	<p>They are exempt upto threshold turnover of Rs. 20 lakh. Earlier, hotel accommodation having tariff of Rs. 1000 per day or less was exempt from GST. Private hostels charging Rs. 30000 or less per month were taking benefit of this exemption.</p> <ul style="list-style-type: none"> • This exemption in respect of hotel accommodation having tariff of Rs. 1000 orless per day has been withdrawn with effect from July, 2022 based on the recommendations of GoM on rate rationalization. (47th GST Council meeting). Now private hostels are claiming exemption applicable to renting of residentialdwelling for use as residence. (Sl. No. 12 of notification No. 12/2017 - CTR). • The judgment of the Hon'ble Karnataka High Court dated 03.02.2022 in the case of Taghar Vasudeva Ambrish that residential dwelling includes hostels has been appealed against by the department and the matter is pending before Hon'ble Supreme Court of India. • Since the case of Taghar Vasudeva Ambrish is pending before the Hon'ble Supreme Court, the same was deferred by the 50th GST Council held

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p><i>of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-CT(Rate) refers]</i></p> <ul style="list-style-type: none"> • However, in the case of TagharVasudeva 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 "<i>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.</i>" 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 "<i>it cannot be held that the residential dwelling does not include hostel which is used for residential purposes by students or working women.</i>" Thus, the court has held the service of hostel accommodation 	<p>on 11.07.2023.</p> <ul style="list-style-type: none"> • In light of the fresh multiple representations on the issue, the matter was again discussed in the Fitment Committee meeting. • As per Annexure to notification No. 11/2017-CTR dated 28.06.2017, accommodation services provided by Hotels, Inn, Guest houses, Clubs & the like are classified under SAC 9963. Other accommodation services such as student residences, hostels, Camps, Paying Guest and the like are also classified under the same heading. The said entries reads as below: <p><i>"Group 99631 Accommodation services</i> 996311 - <i>Room or unit accommodation services provided by Hotels, Inn, Guest House, Club and the like</i> 996312 - <i>Camp site services</i> 996313 - <i>Recreational and vacation camp services.</i></p> <p><i>Group 99632 Other accommodation services</i> 996321 - <i>Room or unit accommodation services for students in student residences</i> 996322 - <i>Room or unit accommodation services provided by Hostels, Camps, Paying Guest and the like</i> 996329 - <i>Other room or unit</i></p>

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>as the services byway of renting of residential dwelling for use as residence.</p> <ul style="list-style-type: none"> Entry no. 12 of notification No. 12/2017-CT (Rate) dated 28.06.2017 exempts the servicesby way of renting of residentialdwelling 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 oftaxation on Service apartments, which were usually booked by thecompanies for a considerably longer period. Further, services provided by an education institution to its students, faculty and staff are already exempt from payment of GST vide Sr. No.66 of the notification No. 12/2017-CTR. Hence, hostel 	<p><i>accommodation services nowhere else classified"</i></p> <ul style="list-style-type: none"> Further, heading 9972 includes real estate services involving owned or leased property. It includes rental or leasing services involving own or leased residential property that are primarily residential and excludes accommodation services provided by operating hotels, motels, rooming houses, school dormitories, camp sites and other lodging places. The said entries in Annexure to notification No. 11/2017 - CTR reads as below: <p><i>"Heading 9972 - Real estate services</i> <i>Group 99721 - Real estate services involving owned or leased property</i> <i>997211 - Rental or leasing services involving own or leased residential property"</i></p> <ul style="list-style-type: none"> Further, in the Explanatory notes to the Scheme of Classification of Services, it clearly mentions that the service code 997211 does not include accommodation service such as school dorms etc. The relevant extract is placed below: <p><i>"997211 Rental or leasing services involving own or leased residential property This service code includes rental or leasing services</i></p>

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p>facilities wherever provided by an educational institution to its students, faculty and staff are covered under this exemption.</p>	<p><i>concerning residential properties by owners or lease holders houses, flats, apartment buildings, multipleuse buildings that are primarily residential, residential mobile home sites.</i></p> <p><i>This service code does not include: - accommodation services provided by operating hotels, motels, rooming houses, school dormitories, camp sites and other lodging places, cf.99631”</i></p> <ul style="list-style-type: none"> • Service by way of hostel accommodation, service apartments/ hotels are not classified under heading 9972 and thus, it is not a service of renting of residential dwelling for use as residence which is exempted as per entry no. 12 of the notification No. 12/2017-CT (Rate) dated 28/06/2017. • As regards requests received from charitable trusts running hostels for poor and middle class students, there is no exemption for hostels run by charitable trusts or religious institutions at present. However, renting of rooms having charges less than Rs 1000/- per day, in religious precincts by a registered charitable or religious trust is exempt from GST vide S.No.13 of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<ul style="list-style-type: none"> It is proposed that Chapter heading 9963 may be deleted from Column No. 2 in the notification No. 12/2017-CT(R), the to remove ambiguity. By doing so only the entry of residential dwelling falling under 9972 will be exempted. Further, an Explanation may be inserted in Sl. No. 12 of Notification No. 12/2017-CT(R) dated 28.06.2017 stating that nothing contained in this entry shall apply to: <ul style="list-style-type: none"> (i) accommodation services for students in student residences; and (ii) accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.
3	Ascertaining value of land for deciding value of construction services in case of sale of commercial /residential apartments.	<ul style="list-style-type: none"> As per paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017, in case of supply of “construction service”, involving transfer of land or undivided share of land, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, and the value of such transfer of land or undivided share of land, shall be deemed to be one third of the total amount charged for such supply. 	<ul style="list-style-type: none"> Section 15(5) of CGST Act, 2017 empowers Government to notify supplies the value of which will be determined in the manner as prescribed. Accordingly, modalities of valuation have been prescribed, exercising this power, on the recommendations of the Council. It is mentioned that a similar request on valuation of land based on pin code, area, etc. was placed before 47th meeting of GST Council held in June, 2022, however no action was recommended

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<ul style="list-style-type: none"> • However, Hon'ble High Court of Gujarat in the case of Munjaal Manishbhai Bhatt Vs. UOI in SCANo. 1350 of 2021 dated 06.05.2022, in para 122, mandatory deduction of 1/3rd of total consideration towards value of land is declared ultra-virus. The said para is shown below: • “in the result, the impugned Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and identical notification under the Gujarat Goods and Services Tax Act, 2017, which provide for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land is ultra- vires the provisions as well as the scheme of the GST Acts. Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India.” • Further, in the said judgment Hon. Gujarat High court proclaimed thatdeduction of 1/3rd of the value of land will be permitted at the optionof taxpayer. Relevant para 123 and124 are given below; <i>“123 While we so conclude, the question is whether the impugned paragraph 2 needs</i> 	<p>by the Council because the matter has been litigated in the courts and is sub-judice at present.</p> <ul style="list-style-type: none"> • It is also mention that the Gujarat High Court has not only directed to deduct value of land on actual basis where it is ascertainable, but has also ordered to refund the excess amount of tax paid on this count in the past. The said order of the Hon'ble High Court has been contested before the Supreme Court. Since an appeal filed against the Gujarat High Court order is pending in the Hon'ble Supreme Court. • Fitment Committee deliberated on the issue and recommended that the matter may be deferred.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		<p><i>to be struckdown or the same can be saved by reading it down. In our considered view, while maintaining the mandatory deduction of 1/3rd for value of land is not sustainable in cases where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of valuation rules, such deduction can be permitted at the option of a taxable person particularly in cases where the value of land or undivided share of land is not ascertainable.</i></p> <p><i>124 The impugned paragraph 2 of Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 and the parallel State tax C/SCA/1350/2021CAV JUDGMENT DATED: 06/05/2022 Notification is read down to the effect that the deeming fiction of 1/3rd will not be mandatory in nature. It will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable."</i></p> <ul style="list-style-type: none"> • In one of the search operation, it is found that promoter, involved in construction of commercial apartments, has claimed 60% deduction towards the value of land. Taxpayer has taken resort of the above judgment of Hon. 	

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		Gujarat High Court and paid GST on 40% of the total amount charged for such supply.	
4.	A request has been received MEITY to provide clarification regarding incentive amount that is shared by acquirer bank with other stakeholders in the digital payment ecosystem, as this also comes under the purview of the Gazette notification issued to notify the Incentive scheme	<ul style="list-style-type: none"> A Gazette notification was issued in compliance with the budget announcement (FY 2021-22), to give further boost to digital transactions in the country. It was decided by government to incentivise the acquiring banks by way of paying percentage of value of RuPay Debit card transactions and low value BHIM UPI transactions for a period of one year w.e.f April, 2021. Further, in the same Gazette notification, it has been notified that the incentive will be shared by the acquiring banks with other stakeholders. Under the said scheme, the Government has paid incentive for FY 2021-22 and is in process of making Q4 FY 2022-23 payment. 	<ul style="list-style-type: none"> Applicability of GST on incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions was examined in the 48th GST Council meeting held on 17th December, 2022. Based on the recommendations of the GST Council meeting, Circular 190/02/2023- GST dated 13.01.2023 was issued clarifying that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable. Clarification now being sought by MeitY is regarding incentive amount that is further shared by acquiring bank with other stakeholders in the digital payment ecosystem. In the Gazette Notification dated 17th December 2021, it was mentioned that <i>'The incentive will be shared by</i>

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
			<p><i>the acquiring banks with other stakeholders. The distribution of the incentive amongst the stakeholder will be decided by NPCI in consultation with the Banks’.</i></p> <ul style="list-style-type: none"> • Further, vide Gazette Notification dated 14th January 2023, it was stated that <i>‘The incentive will be shared by the acquiring banks with other payment system participants and the payment system operator, in the proportion and manner decided by NPCI in consultation with the participating banks’.</i> • The issue was discussed in the Fitment Committee. Karnataka stated that it shall send a note on the issue and the matter may be deferred.

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

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

2. The details of the ad hoc exemption orders issued recently are as follows:

Order No.	Date	Remarks
AEO No. 06 of 2023	28.08.2023	Request from Disaster Management Division (DMD), MHA, for Ad hoc exemption for import of instruments for implementation of pilot project on Glacial Lake Outburst Flood (GLOF) risk in Sikkim (order copy enclosed).
AEO No. 07 of 2023	29.08.2023	Request from Department of School Education & Literacy, Ministry of Education for Ad hoc exemption for import of 1.15 million footballs for distribution amongst Schools in India (order copy enclosed).
AEO No. 08 of 2023	25.09.2023	Request from the Ministry of External Affairs for Ad hoc exemption for import of Dornier Engines to be exported to Seychelles (order copy enclosed).

3. This is placed for the information of GST Council.

F.No. 461/07/2023-Cus V
Ad hoc Exemption Order No. 6 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 August 2023

To,
The Chief Commissioner of Customs
Delhi Zone

Sir,

Subject: Request for Ad hoc exemption for import of instruments for implementation of pilot project on Glacial Lake Outburst Flood (GLOF) risk in Sikkim-reg.

The undersigned is directed to refer to a request dated 08.08.2023 (copy enclosed) received from the Under Secretary to the Government of India, Ministry of Home Affairs, Disaster Management Division (DMD) seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for the goods received as grant from Switzerland.

2. It has been informed that:

- i. National Disaster Management Authority (NDMA) is implementing a Pilot Project on Glacial Lake Outburst Flood (GLOF) risk, in collaboration with the Swiss Development Cooperation (SDC) in Sikkim.
- ii. SDC team will be installing equipment for early warning system at two locations in Sikkim.
- iii. The purpose of pilot project is to build capacity among concerned States/UTs, organizations of our country for mitigation of GOLF, which is an emerging challenge in disaster front.

2.1 DMD has requested for waiving off the customs duties and IGST (where applicable) for the above-mentioned imported goods received as grant for a Pilot Project on Glacial Lake Outburst Flood (GLOF) risk in Sikkim. The project will help in building capacity among concerned States/UTs, organizations of our country for mitigation of GOLF.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts the subject goods from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and, whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (where applicable), subject to the end use for the purpose being imported and in compliance of the provisions of the Customs Act, 1962.

4. An undertaking to comply with the conditions mentioned in Para 3 above shall be submitted to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of this Order should be brought to the immediate notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

6. This order is valid for imports made up to 27.02.2024.

Yours faithfully,



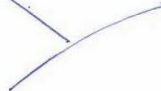
(Harish Kumar)

Under Secretary to the Govt. of India

Copy to:

- The Under Secretary to the Government of India, Ministry of Home Affairs, Disaster Management Division.
- 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,



(Harish Kumar)

Under Secretary to the Govt. of India

F.No. 460/01/2023-Cus V
Ad-hoc Exemption Order No. 7 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 29th August 2023

To,
The Chief Commissioner of Customs
Mumbai Zone-II

Sir,

Subject: Request for Ad hoc exemption for import of 1.15 million footballs for distribution amongst Schools in India-reg.

The undersigned is directed to refer to a D.O. dated 02.08.2023 (copy enclosed) received from the Secretary to the Government of India, Ministry of Education, Department of School Education & Literacy seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for the goods received as grant from FIFA.

2. It has been informed that:

- i. All India Football Federation (AIFF) is a member of Federation Internationale de Football Association (FIFA), the international governing body of football. AIFF is affiliated and registered with Ministry of Youth Affairs and Sports, Government of India as a National Sports Federation, and a member of the South Asian Football Federation.
- ii. AIFF and Ministry of Education have signed an MOU with FIFA. The scope of the MoU outlines that “The Football for Schools” program aims at making football more accessible for school children and therewith contributing to education, social development and empowerment of boys and girls.
- iii. The program entails empowering lac of government schools, crores of school children and the entire football ecosystem in India by resourcing them with 1.15 million footballs.

2.1 AIFF has requested for waiving off the customs duties and IGST (where applicable) for the above-mentioned imported goods, i.e. 1.15 million footballs, received as grant for “The Football for Schools” program.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts the subject goods from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and, whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (where applicable), subject to the end use for the purpose being imported and in compliance of the provisions of the Customs Act, 1962.

4. An undertaking to comply with the conditions mentioned in Para 3 above shall be submitted to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of this Order should be brought to the immediate notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

6. This order is valid for imports made up to 28.02.2024

Yours faithfully,



(Harish Kumar)

Under Secretary to the Govt. of India

Copy to:

- Shri Kalyan Chaubey, President, All India Football Federation, Football House, Sector 19, Phase 1, Dwarka, New Delhi 110075.
- 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,



(Harish Kumar)

Under Secretary to the Govt. of India

F.No. 462/07/2023-Cus V
Ad-hoc Exemption Order No. 8 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 25th September 2023

To,
The Chief Commissioner of Central Goods & Services tax Zone
Thiruvananthapuram Zone

Sir,

Subject: Request for Ad hoc duty exemption for import of Dornier Engines to be exported to Seychelles-reg.

The undersigned is directed to refer to a communication under ID I/SEY/889/1/2019 dated 21.07.2023 (copy enclosed) received from the Ministry of External Affairs seeking exemption from payment of duty in terms of Section 25(2) of the Customs Act, 1962, for two engines of Dornier aircraft gifted by India to Seychelles and sent back to India for periodic overhaul.

2. It has been informed that:

- i. two Dronier aircrafts were donated by Government of India (GoI) as gifts to Government of Seychelles along with one spare engine with each aircraft. These are maintained and operated in Seychelles by Indian Naval Aviation Team consisting of Indian Navy personnel on deputation to Seychelles Defence Forces.
- ii. the two repairable Dronier engines were transhipped in March/April 2023 for overhauling at M/s HAL Bengaluru. The Government of Seychelles has requested for exemption from customs duty on the engines for transit from India and back.
- iii. in accordance with GoI's vision of SAGAR- 'Security and Growth for All in the Region' and 'Neighborhood First' policy, India has an active cooperation profile in the IOR and is a preferred partner for countries in the region for defence and security.

2.1 The Ministry of External Affairs has requested to waive the customs duty for the above-mentioned imported goods.

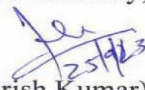
3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), on being satisfied that it is necessary in the public interest so to do, hereby exempts the subject goods from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and, whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (where applicable), subject to the end use for the purpose being imported and in compliance of the provisions of the Customs Act, 1962.

4. An undertaking to comply with the conditions mentioned in Para 3 above shall be submitted to the jurisdictional Commissioner of Customs of the port of import for claiming the benefit of exemption under this Order.

5. Any infringement of this Order should be brought to the immediate notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

6. This order is valid for imports made up to 24.03.2024

Yours faithfully,


(Harish Kumar)

Under Secretary to the Govt. of India

Copy to:

- Shri Ankit Sharma, Commandant (JG), Officer on Special Duty (IC-III), Room No. 117, B Wing, Sena Bhawan, New Delhi.
- Shri Puneet Aggarwal, Joint Secretary (IOR), Email: jsior@mea.gov.in
- 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,

(Harish Kumar)

Under Secretary to the Govt. of India

Agenda Item 7: 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)

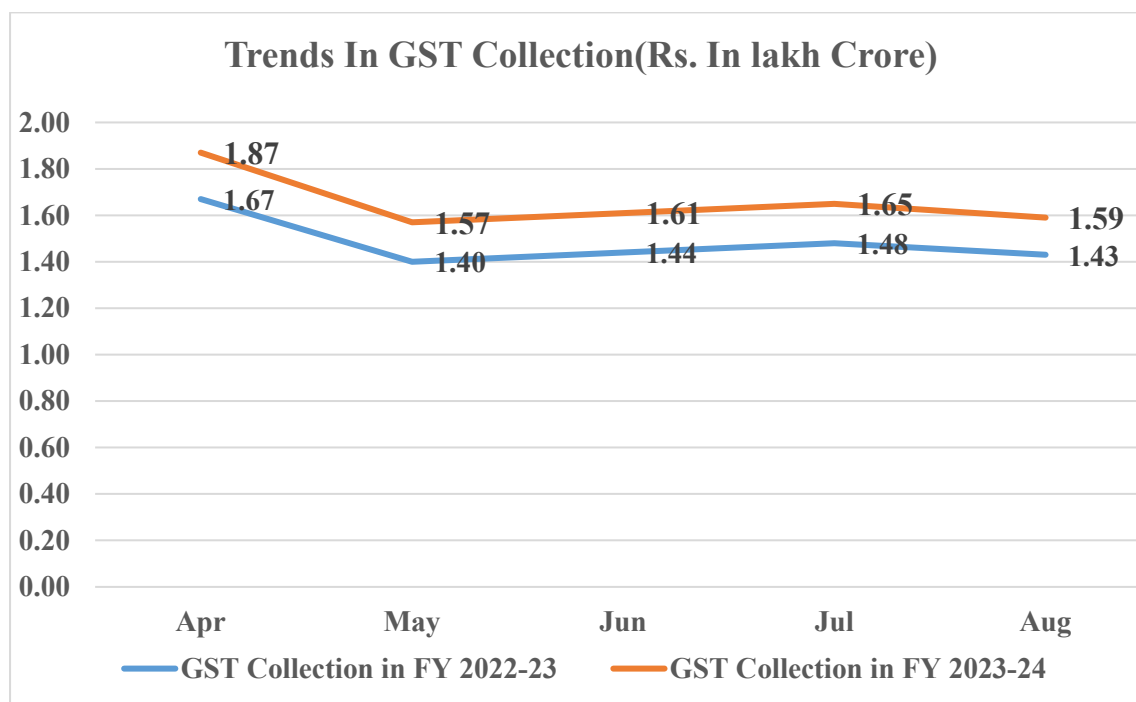


Table 1: Monthly gross GST collection (₹ crore)

GST Collection	Apr'23	May'23	Jun'23	Jul'23	Aug'23
CGST	38,440	28,411	31,013	29,773	28,328
SGST	47,412	35,828	38,292	37,623	35,794
IGST	89,158	81,363	80,291	85,930	83,251
<i>Domestic</i>	54,186	39,591	41,256	44,691	39,701
<i>Imports</i>	34,972	41,772	39,035	41,239	43,550
Comp Cess	12,025	11,489	11,900	11,779	11,695
<i>Domestic</i>	11,124	10,431	10,872	10,939	10,679
<i>Imports</i>	901	1,057	1,028	840	1,016
Total	1,87,035	1,57,090	1,61,497	1,65,105	1,59,069

2. Table 2 shows the IGST collected, refunded, and settled/apportioned during FY 2023-24 till August, 2023.

Table 2: IGST Collection/Settlement/Apportionment/Refund in FY23-24
(Figures in Rs. Crore)

1	Collections (+)	4,14,928.22
2	Recovery from IGST Ad-hoc apportionment (+)	0
3	Refunds (-)	60,406.71
4	Settlement (-)	
	i. CGST	1,94,822.80
	ii. SGST	1,62,592.90
5	Ad-hoc Settlement (-)	0
	i. CGST ad hoc	0
	ii. SGST ad hoc	0
6	Net (1+2-3-4-5)	(2,894.19)

Source: PrCCA, CBIC

Compensation Fund

3. As per provision of GST (Compensation to States) Act, 2017, the Compensation Cess collected since implementation of GST w.e.f. 01.07.2017 till July, 2023 and the compensation released till September, 2023 are shown in the table below:

There is recovery from some of the States i.e Arunachal Pradesh, Assam, Manipur, Tripura

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
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	46,316.35 (till July, 2023)
Compensation released	41,146	69,275	1,20,498	1,36,988	97,500	1,49,168	25,973.50 (till Sep, 2023)
Balance	21,466	47,271	55,736*	3939	16,844 ^{\$}	(13,962) [#]	(7,618.74)

* 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

4. The State-wise details of comparison of SGST revenue and the post settlement SGST revenue (including ad-hoc settlement) for FY 2023-24 (April-August) as compared to FY 2022-23 (April-August) may be seen in the Table 5.

Table 5: State-wise Revenue Comparison Q1 (FY 2023-24) vs Q1 (FY 2022-23)

State Code	State/UT	Q1 (2023-24) vs Q1 (2022-23) (Amount Rs. in Crore)					
		Pre-settlement (Apr'22-Aug'22)	Post-Settlement (Apr'22-Aug'22)	Pre-settlement (Apr'23-Aug'23)	Post-Settlement (Apr'23-Aug'23)	SGST Growth (%)	SGST Growth Post settlement (%)
1	Jammu and Kashmir	965	3,003	1,284	3,457	33%	15%
2	Himachal Pradesh	967	2,374	1,130	2,415	17%	2%
3	Punjab	3,248	7,775	3,555	9,052	9%	16%
4	Chandigarh	244	839	284	929	16%	11%
5	Uttarakhand	2,038	3,192	2,202	3,444	8%	8%
6	Haryana	7,662	12,420	8,304	14,403	8%	16%
7	Delhi	5,685	11,423	6,430	13,300	13%	16%
8	Rajasthan	6,455	14,006	7,167	16,060	11%	15%
9	Uttar Pradesh	11,637	27,643	13,552	30,822	16%	12%
10	Bihar	3,013	9,779	3,444	10,723	14%	10%
11	Sikkim	132	354	237	486	80%	37%
12	Arunachal Pradesh	220	692	306	882	39%	27%
13	Nagaland	87	395	131	455	51%	15%
14	Manipur	124	573	148	486	20%	-15%
15	Mizoram	81	358	132	425	63%	19%
16	Tripura	175	589	223	667	28%	13%
17	Meghalaya	191	597	269	737	41%	23%
18	Assam	2,138	4,956	2,458	6,085	15%	23%
19	West Bengal	8,972	15,592	10,062	17,637	12%	13%
20	Jharkhand	3,080	4,545	3,824	5,152	24%	13%
21	Odisha	6,268	7,826	6,870	9,218	10%	18%
22	Chhattisgarh	3,215	4,529	3,505	5,484	9%	21%
23	Madhya Pradesh	4,452	10,927	5,334	13,139	20%	20%
24	Gujarat	15,820	22,978	17,439	26,870	10%	17%
25&26	Dadra and Nagar Haveli & Daman and Diu	283	482	268	471	-5%	-2%
27	Maharashtra	35,239	51,722	42,053	61,783	19%	19%
29	Karnataka	14,417	25,957	16,628	30,369	15%	17%

30	Goa	798	1,431	945	1,670	18%	17%
31	Lakshadweep	4	13	14	56	285%	335%
32	Kerala	4,999	12,127	5,819	13,080	16%	8%
33	Tamil Nadu	14,746	23,551	16,638	26,767	13%	14%
34	Puducherry	193	491	204	625	6%	27%
35	Andaman and Nicobar Islands	85	210	99	229	16%	9%
36	Telangana	6,895	14,711	7,909	16,466	15%	12%
37	Andhra Pradesh	5,311	11,241	5,905	12,914	11%	15%
38	Ladakh	54	197	79	239	46%	21%
97	Other Territory	65	174	95	545	46%	214%
	Grand Total	1,69,958	3,09,671	1,94,949	3,57,542	15%	15%

***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%
Jun'23	81%	59%
Jul'23	80%	60%
Aug'23	80%	60%

Figure 3: GSTR-3B/GSTR-1 Filing till due date

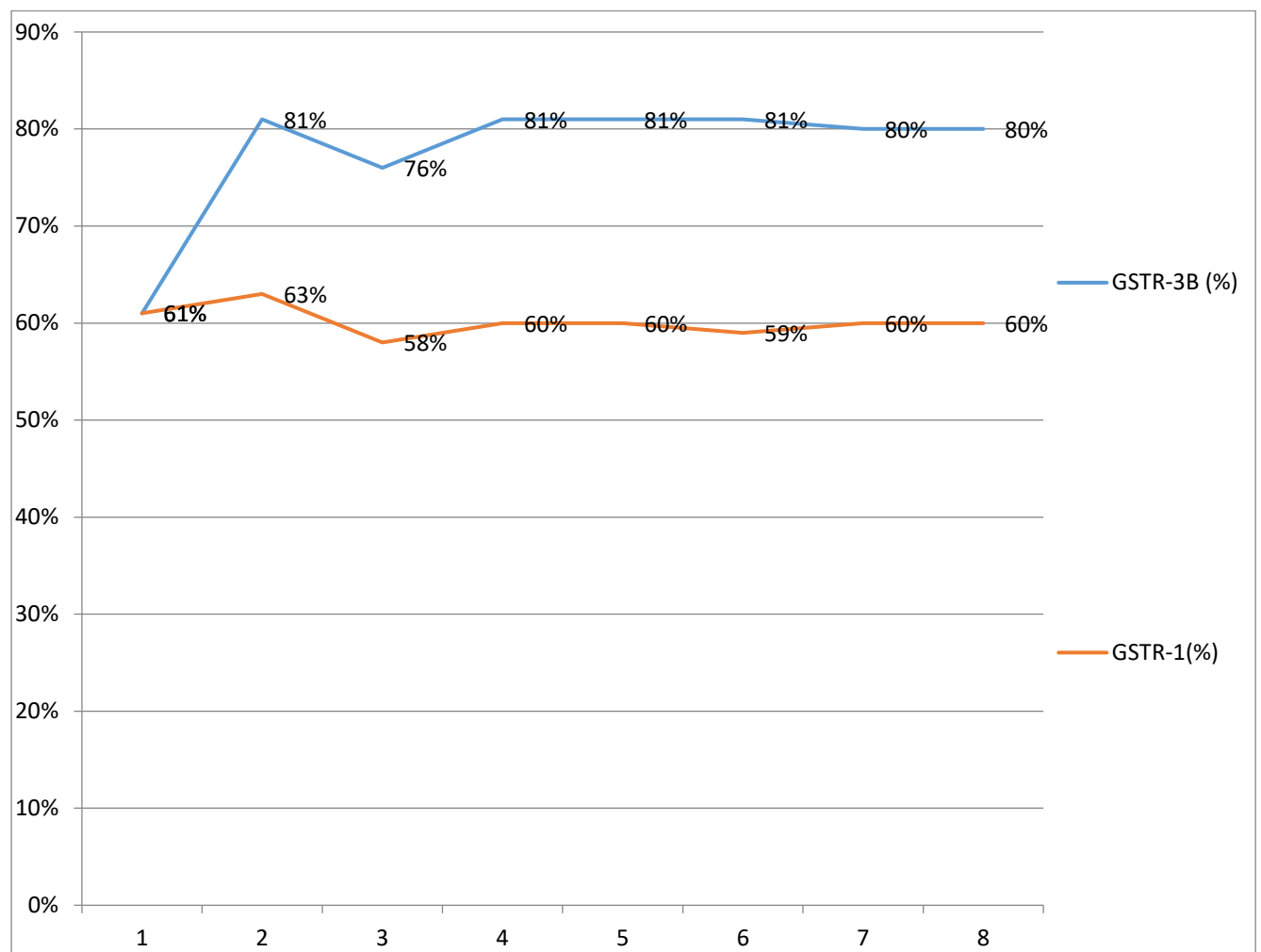


Table 7: State-wise Return filing (GSTR-3B) till due date (Jan'23-Aug'23)

	State/UT	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23
01	Jammu and Kashmir	45%	81%	73%	79%	80%	80%	79%	79%
02	Himachal Pradesh	62%	83%	79%	82%	82%	83%	81%	80%
03	Punjab	75%	82%	79%	85%	84%	84%	84%	83%
04	Chandigarh	78%	85%	81%	86%	86%	84%	84%	85%
05	Uttarakhand	56%	78%	74%	79%	78%	79%	78%	78%
06	Haryana	73%	82%	79%	83%	82%	82%	81%	82%
07	Delhi	71%	82%	80%	82%	81%	83%	81%	81%
08	Rajasthan	70%	82%	77%	83%	82%	82%	81%	80%
09	Uttar Pradesh	53%	82%	76%	82%	82%	82%	81%	81%
10	Bihar	33%	77%	71%	75%	76%	78%	77%	76%
11	Sikkim	37%	76%	71%	76%	75%	78%	77%	76%
12	Arunachal Pradesh	27%	70%	58%	64%	64%	69%	67%	68%
13	Nagaland	33%	73%	66%	71%	72%	74%	73%	73%
14	Manipur	26%	65%	53%	28%	38%	46%	54%	54%
15	Mizoram	22%	74%	73%	75%	76%	78%	74%	79%
16	Tripura	49%	82%	72%	81%	81%	83%	81%	80%
17	Meghalaya	30%	74%	72%	73%	77%	82%	75%	76%
18	Assam	41%	73%	63%	71%	73%	73%	72%	70%
19	West Bengal	57%	83%	79%	83%	83%	83%	82%	82%
20	Jharkhand	51%	81%	75%	80%	80%	81%	80%	80%
21	Odisha	44%	77%	72%	76%	74%	78%	77%	74%
22	Chhattisgarh	54%	72%	63%	72%	73%	73%	73%	71%
23	Madhya Pradesh	58%	79%	70%	78%	78%	78%	78%	77%
24	Gujarat	85%	89%	84%	88%	88%	87%	87%	87%
25	Dadra and Nagar Haveli & Daman and Diu	78%	81%	76%	82%	81%	81%	80%	79%
27	Maharashtra	69%	80%	74%	79%	79%	79%	78%	77%
29	Karnataka	61%	82%	75%	79%	80%	81%	80%	79%
30	Goa	54%	76%	69%	74%	75%	75%	74%	73%
31	Lakshadweep	60%	71%	69%	69%	71%	76%	75%	73%
32	Kerala	63%	80%	71%	78%	79%	78%	77%	79%
33	Tamil Nadu	63%	84%	78%	83%	84%	84%	82%	83%
34	Puducherry	57%	79%	75%	79%	79%	79%	77%	77%
35	Andaman and Nicobar Is	49%	69%	61%	66%	66%	67%	66%	66%
36	Telangana	49%	77%	70%	76%	77%	78%	76%	76%
37	Andhra Pradesh	58%	80%	72%	78%	79%	79%	78%	77%
38	Ladakh	40%	76%	73%	72%	71%	74%	67%	66%
97	Other Territory	75%	78%	81%	77%	75%	79%	76%	77%
	Total	61%	81%	76%	81%	81%	81%	80%	80%

Table 8: State-wise Return filing (GSTR-1) till due date (Jan'23-Aug'23)

	State/UT	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23
01	Jammu and Kashmir	45%	45%	37%	41%	40%	38%	42%	41%
02	Himachal Pradesh	62%	63%	51%	61%	59%	49%	62%	62%
03	Punjab	75%	80%	72%	78%	77%	72%	77%	76%
04	Chandigarh	78%	81%	75%	80%	78%	73%	79%	78%
05	Uttarakhand	56%	58%	50%	57%	55%	50%	56%	55%
06	Haryana	73%	75%	70%	74%	72%	69%	73%	73%
07	Delhi	71%	75%	74%	74%	72%	73%	73%	72%
08	Rajasthan	70%	71%	63%	70%	69%	64%	69%	68%
09	Uttar Pradesh	53%	52%	48%	50%	51%	48%	50%	50%
10	Bihar	33%	32%	29%	31%	31%	30%	31%	31%
11	Sikkim	37%	43%	36%	40%	39%	39%	40%	39%
12	Arunachal Pradesh	27%	32%	25%	23%	27%	27%	28%	27%
13	Nagaland	33%	35%	31%	33%	31%	33%	31%	32%
14	Manipur	26%	25%	25%	13%	17%	22%	23%	25%
15	Mizoram	22%	24%	22%	25%	24%	25%	27%	24%
16	Tripura	49%	49%	42%	46%	46%	45%	46%	44%
17	Meghalaya	30%	35%	28%	32%	32%	33%	33%	34%
18	Assam	41%	42%	35%	39%	38%	36%	39%	38%
19	West Bengal	57%	58%	53%	56%	56%	53%	56%	55%
20	Jharkhand	51%	49%	46%	48%	47%	46%	47%	47%
21	Odisha	44%	45%	39%	42%	42%	39%	43%	43%
22	Chhattisgarh	54%	53%	44%	52%	52%	48%	54%	53%
23	Madhya Pradesh	58%	57%	45%	54%	53%	47%	54%	53%
24	Gujarat	85%	86%	81%	84%	84%	82%	84%	84%
25	Dadra and Nagar Haveli & Daman and Diu	78%	80%	78%	80%	79%	78%	79%	79%
27	Maharashtra	69%	72%	66%	69%	68%	67%	70%	69%
29	Karnataka	61%	63%	57%	57%	58%	58%	59%	59%
30	Goa	54%	62%	57%	59%	59%	60%	60%	60%
31	Lakshadweep	60%	58%	50%	51%	45%	54%	54%	52%
32	Kerala	63%	65%	58%	62%	61%	60%	62%	60%
33	Tamil Nadu	63%	64%	59%	61%	60%	60%	60%	61%
34	Puducherry	57%	57%	53%	54%	52%	54%	53%	53%
35	Andaman and Nicobar	49%	47%	40%	46%	43%	43%	44%	42%
36	Telangana	49%	53%	49%	50%	49%	50%	50%	50%
37	Andhra Pradesh	58%	58%	51%	53%	52%	52%	53%	52%
38	Ladakh	40%	42%	36%	33%	37%	37%	37%	36%
97	Other Territory	75%	77%	79%	74%	78%	78%	78%	77%
	Total	61%	63%	58%	60%	60%	59%	60%	60%

Addendum to Agenda Volume-II for the 52nd meeting of the GST Council

Agenda Item 9: Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route.

Vide section 123 of the Finance Act, 2021, sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the “IGST Act”) has been substituted with sub-sections (3) and (4) as below:

“(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed. 42 of 1999.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”

2. The GST Council in its 50th meeting held on 11th July 2023, recommended that provisions of Section 123 of Finance Act, 2021, amending Section 16 of the IGST Act, to be notified with effect from 1st October 2023. Accordingly, the Notification No. 27/2023-Central Tax dated 31.07.2023 was issued. In the same meeting, the GST Council also recommended issuance of a notification under Section 16(4) of the IGST Act, 2017 to provide for the restriction of the IGST refund route in respect of exports of certain goods like tobacco, pan masala, and other similar items. The GST Council also approved the Notification under Section 16 (4) of IGST Act vide which all goods or services (except the goods specified in column (3) of the TABLE in the said Notification) were notified 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. Accordingly, Notification No. 01/2023-Integrated Tax dated 31.07.2023 was issued and has come into effect from 01.10.2023.

3. The effect of this Notification is that now the exports of all the goods or services (except the goods specified in column (3) of the TABLE in the said Notification) can be made on payment of integrated tax and the refund of tax so paid can be claimed by the supplier of such goods or services. However, the unintended consequence of this notification has been to restrict the Zero rated supplies made to a SEZ developer or a SEZ unit for authorized operations on payment of integrated tax and to make LUT as the default route for claiming refunds of unutilised ITC for such supplies.

4. The intention of the said amendment was to prevent the misuse of the IGST route in respect of evasion prone commodities as proper officer of customs do not have access to the GST portal and therefore, may not be in a position to verify the refund claim properly. Whereas in case of refund of unutilised ITC in case of exports made under LUT route, the jurisdictional GST officers processing the refund have access to all returns and other documents available on GST portal and are in better position to verify such refund claim in details. Thus, it was decided that IGST refund route for goods may be kept open only for some specified class of supplies or class of persons who make zero rated supplies in respect of which the probability of misuse of the scheme are minimal. It is mentioned that all the refunds in respect of supplies made to a SEZ developer or a SEZ unit for authorized operations, both in cases of LUT route as well as IGST payment route, are processed by the jurisdictional tax officers only and not by the Customs.

5. Further, the matter was discussed in 50th GST Council meeting held on 11.07.2023 (Agenda Note No. 3(ii)), in respect of recommendations of Group of Ministers on Capacity based taxation which had recommended restricting IGST refund route in respect of certain evasion prone goods like pan masala, tobacco, mentha oil etc. and the Notification No. 01/2023-Integrated tax was issued accordingly. Neither the GoM had recommended restricting IGST refund route for supplies made to a SEZ developer or a SEZ unit for authorized operations nor had the Council recommended the same in 50th meeting. Therefore, it appears that non-inclusion of supplies to a SEZ developer or a SEZ unit for authorized operations on payment of integrated tax has unintendedly been left out of the coverage of the said Notification.

6. Accordingly, it is proposed to amend Notification No. 01/2023- Integrated Tax, dated 31st July, 2023, w.e.f. 01.10.2023 by insertion (shown in red colour below) so as to include all the suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as class of persons who may make supply of goods or services to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid.

“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

- (i) *all goods or services (except the goods specified in column (3) of the TABLE below) 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; and*
- (ii) *all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as the class of persons who may make supply of goods or services to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid:”*

7. The agenda note along with draft notification (at Annexure A) is placed before the GST Council for deliberation and approval.

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

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS**

**NOTIFICATION
No. xx/2023 – Integrated Tax**

New Delhi, the XXth October, 2023

G.S.R.....(E):—In exercise of the powers conferred by sub-section (4) of section 16 of Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 01/2023-Integrated Tax, dated the 31st July, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 578 (E), dated the 31st July, 2023, namely:-

In the said notification, after the words and letters “hereby notifies”, the words and letters “all goods or services (except the goods specified in column (3) of the TABLE below) 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:” shall be substituted and shall be deemed to have been substituted with effect from 1st October, 2023, by the following words, letters, figures and brackets, namely,

“(i) all goods or services (except the goods specified in column (3) of the TABLE below) 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; and

(ii) all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as the class of persons who may make supply of goods or services to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid.”.

[F. No. CBIC-xxx/x/xxxx-GST]

(Raghavendra Pal Singh)
Director

Note: The principal notification No. 01/2023- Integrated Tax, dated the 31st July, 2023, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 578(E), dated the 31st July, 2023.