

**Draft Minutes of the 49<sup>th</sup> Meeting of the GST Council held on 18<sup>th</sup> February, 2023**

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

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

<b><u>Agenda No.</u></b>	<b><u>Agenda Item</u></b>
1	Confirmation of Minutes of the 48 <sup>th</sup> meeting of the GST Council held on 17 <sup>th</sup> December, 2022 and Errata
2	Report of Group of Ministers on constitution of the Goods and Services Tax Tribunal
3	Ratification of the Notifications, Circulars and Orders issued by the GST Council
4	Issues recommended by the Law Committee for consideration of the GST Council <ul style="list-style-type: none"> <li>i Amendment in Section 23 of the CGST Act, 2017</li> <li>ii Proposal to extend time period mentioned in Section 62(2) of the CGST Act, 2017</li> <li>iii Change in Place of Supply of transportation of goods under Section 13(9) of the IGST Act, 2017</li> <li>iv Rationalisation of late fee for FORM GSTR-9 and amnesty for non-filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10</li> <li>v Amendment in CGST Rules and Notification for biometric based Aadhaar authentication of registration applicants</li> <li>vi Extension of time limit for application for revocation of cancellation of registration</li> <li>vii Extension of time limit under sub-section (10) of section 73 of the CGST Act for FY 2017-18, 2018-19 and 2019-20.</li> </ul>
5	Errata
	Recommendations of the Fitment Committee for consideration of the GST

  
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# MINUTE BOOK

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



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

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

1.4 With the permission of the Chair, the Secretary to the GST Council welcomed all the Hon'ble Members of the Council and participating officers to the 49<sup>th</sup> meeting of the GST Council.

The Secretary on behalf of the Council welcomed the following new Hon'ble Members to their first meeting of the GST Council-

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

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

1.6 Further, he stated that the GST Council had formed another GoM on Capacity Based Taxation and Special Composition Scheme in Certain Sectors on GST with Sh. Niranjan Pujari, Minister of Finance, Odisha as the Convener and Hon'ble Ministers from Delhi, Haryana, Kerala, Madhya Pradesh, Uttar Pradesh and Uttarakhand as Members. The

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GoM had submitted its report which was being placed before the Council for deliberations. He thanked all the Hon'ble Members of the GoM for their valuable recommendations.

1.7 He further stated that a GoM on Casinos, Race Courses and Online Gaming was formed to examine the issue of valuation of said services and related aspects with Sh. Conrad Sangma, Hon'ble Chief Minister, Meghalaya as Convener and Hon'ble Ministers from Maharashtra, West Bengal, Gujarat, Goa, Tamil Nadu, Uttar Pradesh and Telangana as Members. He stated that though the GoM had submitted its report, however due to unavailability of the Hon'ble CM, Meghalaya, tabling of this report was being deferred.

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

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

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

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



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**Agenda Item 1: Confirmation of the Minutes of the 48<sup>th</sup> Meeting of the GST Council**

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

**Decision: The Council adopted the Minutes of the 48<sup>th</sup> meeting of the GST Council.**

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

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

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

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

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

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

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

3.7 The Hon'ble Convener stated that with respect to qualifications of Members, the GoM suggested that the President be a Judge of the Supreme Court (retd.) or Chief Justice of the High Court (retd.). With respect to qualification of Judicial Member, the GoM recommended that he should be a Judge of the High Court (retd.) or District Judge or



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

3.8 Regarding the retirement age of Members, the GoM recommended that the retirement age of President should be 67 years and 65 years for the members. This was kept keeping in view that the retirement age of High Court judge is 62 years. Therefore, the GoM felt that if they applied for Member (Judicial) of Tribunal after 62 years, they would get a tenure of 4 years after the selection process. The Hon'ble Convener further submitted that if a High Court judge so desired, he could take early retirement and apply for the post but in such cases, they should not be given an extension for more than 2 years in the second tenure.

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

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

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

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

3.13 The Hon'ble Member from UP stated that as a Member of the GoM he had agreed with all recommendations except one. He stated that States should have the power to

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

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

3.15 The Hon'ble Member from Maharashtra stated that there should not be a fixed criterion for deciding the number of Benches. Further, he stated that being a large State, Maharashtra will also have to make provision for Benches for regional areas. He stated that the power to decide the number of Benches should be left to the States. Regarding the composition of Benches, it was suggested that appointment of Technical Member (Centre and State) in States need to be made alternately based on robust methodology like a fixed roster system i.e. if one Bench comprised Technical Member (Centre), then the next Bench could comprise Technical Member (State) and in case of four-member Benches, one Technical Member should be from Centre and another Technical Member should be from



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State. He further agreed with the proposal that Technical Member should not be below the rank of Joint Commissioner as it would ensure that people with reasonable experience in taxation to apply for the post. Further, the power proposed to be given to States to notify rank higher than the First Appellate Authority would be redundant where the First Appellate Authority is of the rank of Joint Commissioner but where Additional Commissioner rank officer is not available. Therefore, it was suggested that the proposed formulation may be amended so that Joint Commissioners become eligible for this post of Technical Member as a bigger pool of officers would be available. Further, the Hon'ble Member stated that they supported the proposal for National Tribunal with Benches at State level.

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

3.17 The Hon'ble Member from West Bengal stated that they were in complete agreement with the views expressed by Members of UP and Rajasthan on the question of constitution of State Tribunal. She stated that the National Tribunal at Centre could have Regional Benches but over and above that States should have their own Tribunal. The disputes pertaining to Place of supply, etc. can be referred to the National Tribunal. The Hon'ble Member also drew attention of the Council to the guidelines laid down in L. Chandrakumar case. Further, it was stated that in Revenue Bar Association case, the Court had not decided on the constitution of the State Tribunals and that there is also overriding power given under Art 323B over Article 246A for constitution of such Tribunal. The Hon'ble Member stated that it was their view that to keep the federalism intact it would be better to have a National Tribunal at Centre with Regional Benches in State along with independent State tribunals.

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

3.19 The Hon'ble Member from Bihar agreed with the views expressed by Members from State of UP, Rajasthan and West Bengal and he reiterated that States should have the power to set up State Tribunals. It was also emphasized that the number of Benches should be determined on the basis of their tax payer base and the States should have the power to determine the number of Benches. It was further mentioned that the ScSC should have a member recommended by the State where the Tribunal would be set up. He suggested that power should be given to States to appoint the Technical Member (State) and preferably also the other Members to the Benches. In addition, it was mentioned that option should be given for keeping Technical Member (Centre) along with Technical Member (State) in these Benches so that there would be assured representation for the State and there could be two

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Judicial Members Also, it was stated that the Council could decide on the monetary limit for adjudication of cases at the level of State Benches as well as that of the National Tribunal. Further, he also stated that the Chief Justice of the High Court of concerned State should be the Chairman of the ScSC for selection of Technical Member (State).

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

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

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

3.23 The Hon'ble Member from Tamil Nadu thanked the Hon'ble Deputy Chief Minister from Haryana for the efforts of the GoM. He elaborated that there are 31 Commercial State laws and 31 Commercial Tax departments across various States. He further stated that the Court order should not dictate the administrative policy to the Union Government or to the GST Council, as this would be undermining the powers of the Executive. He further stated that the GST Council should exercise its authority under the Constitution which was the prerogative of elected representatives. He elaborated that if the Council were to create a particular scheme for the Tribunals then the same can be taken up before the judiciary for deciding whether the scheme is valid or not under the Constitution. He opined that the directive of the Court that the Tribunals that are to be prospectively set up should follow a set principle, appears to be completely violative of the prerogative of the elected representatives. He pointed out that there are existing VAT Tribunals with one Judicial and



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two Technical Members which have not been invalidated by the Courts. He mentioned that if the Council proceeded with the view of the High Court, there would be a lot of complexity about the eligibility of the Members both Technical and Judicial. He further stated that in case of National Tribunal having Benches across the States, the administrative burden on a single body would be significantly higher. He stated that the Council should go with ratio of Judicial and Technical Members just like the existing VAT Tribunals and it should not give up the idea of State Tribunals. He also added that the said judgment has not discussed anything about State Tribunal. He also emphasized that when persons who are not from the particular State are appointed as Members of Tribunals then they would not be conversant with the trade practices and usages that are peculiar to that State and in this regard, he cited the example of 'Rab' that was taken up for discussion in the last Council meeting. He further stated that the local context would be lost in the case of National Tribunals.

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

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

3.26 The Hon'ble Member from Chhattisgarh stated that the nature and spirit of the Constitution is clearly federal and decisions should be taken accordingly without impinging on its provisions. He further stated the present judicial hierarchy is District court, High Court and Supreme Court and not having an appellate authority at State level and proceeding straight to National Tribunal does not appear proper. He stated that there must be State Tribunals and appeal against the State Tribunal in case of conflicting views should go to the National Tribunal. He further stated that since there are two Acts i.e. CGST and SGST, it is only desirable that Technical Members from both Centre and State are given representation in the Tribunals.

3.27 The Hon'ble Convener of GoM stated that while making the recommendations, all six Members of the GoM had considered the fact that tax was collected at State level on consumption basis and the biggest evaluation method for consumption is the population and not the number of taxpayers, therefore, the GoM had recommended that the number of State Benches would be decided according to the population of the State. Regarding the selection of Technical Member (State), it was accepted that in case of Technical Member (State), the



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Chief Secretary of the State would be a Member of the ScSC. He further stated that there was a conflict regarding whether there should be a State Tribunal or a National level Tribunal having Benches in every State. He clarified that if an appeal is decided at the Joint Commissioner level, then as per the recommendations of GoM, the appeal would go to the National Bench or Bench at State level and then it would go to the High Court and then to the Supreme Court for final judgement; that if a State Tribunal was created then there would be a five tier system and therefore the GoM had collectively recommended the creation of National Tribunal and Benches in order to have faster delivery of judgments. He further stated that on the eligibility criteria of having experience of 25 years for the Technical Member (State), the Council might take a decision regarding relaxation in age or required experience as recommended by the State of Manipur. Regarding the number of Members in Benches it was stated that the Council can make a decision to keep it at 1:1 or 2:2 but the GoM had recommended having Judicial Member and Technical Member in ratio 1:1 in every Bench after thorough discussion and if the same was to be amended, then there could be litigation at Supreme Court and therefore the ratio of 1:1 had been recommended in view of the judgement of the Hon'ble Court. He also stated that these recommendations were made keeping in view the One Nation, One Tax and One Tribunal and also to avoid situations wherein conflicting views are given by different fora as is seen in case of AAR at present.

3.28 The Secretary to the Council stated that the recommendations had been made by the GoM after having considered the judgments of both the Hon'ble High Court and the Supreme Court. He also clarified that the question of having equal number of Judicial and Technical Members had been discussed by the Supreme Court in subsequent cases and it had been decided that equal number of Judicial Members and Technical Members should be maintained in the Tribunals. He also emphasized that the provisions of CGST Act and the SGST Act are *pari materia* to each other and also the rates of taxation are same for all supplies of goods and services. Accordingly, the GoM had been constituted to arrive at a uniform view in case of GST Tribunal. He further clarified that every State should have its own Bench even though some States had asked for their own Tribunal. The critical issue before the Council was the composition of the ScSC. He further stated that the Members of the Tribunal were expected to deliver judgements fairly, independently and in a nonpartisan manner and as regards the ratio of 1:1 from Centre and State in a State Bench, the same had been recommended for getting adequate representatives from both Centre as well as State services. He further stated that the existing law under CGST Act that has been struck down by the High Court, provides for one Tribunal. The CGST Act provided for National Tribunal with Regional Benches and State Benches with Area Benches but it envisages only one Tribunal. This was decided six years ago at the time of inception of GST and this may not be revisited. Further, the major issue was regarding who makes the recommendations for the Technical Member (State). Regarding the number of Benches, he stated that the same can be varied by the Council as per the requirement of the State. Regarding the request for reduction of 3 years tenure for AIS officers for the eligibility criteria, he stated that it was a fair tenure stipulation and that without that much tenure the officer would not have sufficient experience to adjudicate on tax disputes. The Secretary clarified that Section 109 (5) of the CGST Act, as recommended by the GoM, states that in addition to the Principal Bench, Government shall, by notification, constitute such number of Benches at such locations as may be recommended by the Council based on the request of the State Government. He clarified that therefore, the



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flexibility to increase the number of Benches has already been provided for in the proposed amendment to the Section.

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

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

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

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

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



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

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

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

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

3.38 The Hon'ble Member from Andhra Pradesh stated that he was not for two plus two formulation but to have three Members in the pool, but the quorum of the Bench would be two. This would also enable speedy resolution of cases. He further added that the GoM has recommended a National Principal Bench and State Benches with power of State for appointing the Technical Members for the reason that this would ensure uniformity of



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judgement across the State Benches and he also added that having State Tribunals would mean that the appeals would lie from those Tribunals to National Tribunals thereby causing further delay in deciding appeals.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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send the reference to Law committee in this regard so that Law Committee can examine it in detail.

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

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

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

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

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

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



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

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

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

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

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

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

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

5.4 The Principal Commissioner, GST Policy Wing stated that while the late fee for delayed filing of FORM GSTR-1, FORM GSTR-3B, FORM GSTR-4 and FORM GSTR-7

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has already been rationalized from June 2021 onwards, based on the recommendations of the Council, however, the late fee for delayed filing of annual return in FORM GSTR-9 has not been rationalized as yet. Requests have been received from various stake holders as well as tax administrations for rationalization of late fee for delayed filing of annual returns. He further stated that requests have also been received from taxpayers as well as tax administrations to provide an amnesty scheme for waiver/ reduction of late fee for non-filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10.

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

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

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

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



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scheme for non-filers should be extended to FORM GSTR-1 and FORM GSTR-3B also, considering the condition of the MSMEs.

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

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

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

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



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that the 0.5% of the turnover is high, thus, it was recommended by the Law Committee to reduce the upper limit to 0.04% but it could be reconsidered by the Council.

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

5.4.10 Hon'ble Minister from Haryana supported the Law Committee recommendations and stated that there are already various penalties for other returns and the reduced upper limit of Rs 20000/- for Rs 5 crore turnover would be more than enough as late fee for GSTR-9.

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

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

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

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

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

5.6 Principal Commissioner (GST PW) informed that a recommendation has also been made by the Law Committee for extension of time limit for filing application for revocation of cancellation of registration, as a facility for the benefit of MSME Sector. He mentioned that a number of taxpayers could not file their application for revocation of cancellation of registration within the time limit specified under Section 30 of CGST Act. He stated that



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representations have been received to the effect that the present time limit of 30 days plus 30 days plus 30 days for applying for revocation of cancellation of registration under section 30 is quite less and there is a need to increase this time limit. Representations have also been received that in large number of cases, small taxpayers could not apply in time for revocation due to lack of funds or other reasons, adversely affecting business and there is a need to bring them again in mainstream by giving them a chance to revive their registrations.

5.6.1 He added that primarily, there were two recommendations of the Law committee regarding this agenda. The first recommendation is that the time limit for making an application for revocation of cancellation of registration may be raised from 30 days to 90 days and then, Commissioner or an officer authorized by him in this behalf can further extend this time period for a further period not exceeding 180 days on sufficient reason being shown. Law Committee also recommended that timelines for filing application for revocation of cancellation of registration may not be hard-coded in the Act and may be prescribed through the Rules, for which section 30 of CGST Act and Rule 23 of CGST Rules may be amended as detailed in the agenda. The second recommendation of the Law Committee was that an amnesty scheme may be provided for filing of application of revocation of cancellation of registration in past cases where such application could not be filed within prescribed time limit and where the registrations have been cancelled due to non-filing of returns. He added that during the officers' meeting, it was suggested that the dates for the said amnesty scheme could be finalized in consultation with GSTN, based on the readiness of the portal.

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

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

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

5.7.1 The Secretary stated that the Law Committee has recommended the extension of time limit for issuance of SCN and orders. However, the time period for issuance of notices



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

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

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

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

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

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



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

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

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

6.5 The Hon'ble Member from Uttar Pradesh stated that their State had brought up this agenda and *Rab* was a liquid form of Jaggery. He agreed with the recommendation of the Fitment Committee that similar tax rates should be applicable on both *Rab* and Jaggery.

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

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

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

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

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

**Decision: The Council agreed with the recommendations of the Fitment Committee and recommended to explain that a tag, tracking device or data logger already affixed on a container of durable nature at the time of import shall be eligible for IGST exemption,**



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as is available to the said container under the notification 104/94-Cus and also agreed that no such exemption would be available to tags, tracking devices and data loggers when imported separately. The Council also agreed for amendment of the entry at Serial number 41A of Notification number 1/2017-Compensation Cess (rate) as recommended by the Fitment Committee.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

7.4 The Hon'ble Convenor of GoM further discussed the international practices that are common in this trade and stated that the GoM agreed that GST evasion is rampant in this sector. He stated that tax evasion in tobacco products is an internationally common practise and emphasized that alternate systematic enforcement and administrative mechanism needs



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

7.5 The Hon'ble Member from Uttar Pradesh, who was also a member of the GoM thanked the Hon'ble Chairperson for taking a special interest in capacity based taxation and special composition scheme in certain sectors in GST. He stated that the report has a provision of Special Monthly Return indicating machine wise/shift wise production and disclosing details like machine disposed-off, machine added, and inputs procured and utilized in quantity and value terms etc. He stated that if the detail of labourers is also added in the return, it would help in verification and cross examination of production. He also emphasized that sometimes large-scale manufacturers take registration in the name of dummy persons in lieu of some remuneration and if the goods are seized, then the responsibility is fixed on the dummy person instead of the actual manufacturer and therefore, he emphasized that more efforts are required to curb this practise. He stated that despite the keen interest evinced by the Hon'ble Union Finance Minister of India in curbing such malpractices, there is a large-scale black marketing in the trade of Pan Masala. He thereafter stated that there is large scale evasion of tax in this sector as there is a high demand for these products in the market and even if such evasion is eventually caught, dummy persons are prosecuted and actual offenders walk free. He stated that if the recommendations of GoM are incorporated in totality, then the the supervisory authority/ inspection authority will have tremendous power in their hands and there could be a possibility to collude and manipulate the reports. He thereafter stated that such a capacity based taxation system is not within the purview of existing GST laws. He thereafter put forth his other point before the Council and suggested that the Council should ponder over as to which mechanism should be adopted to prevent the evasion of tax and suggested that as per his understanding at least 70 percent of the tax should be deposited in advance from the manufacturer depending upon the capacity of manufacturer, this measure could help curb the tax evasion to a great extent.

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



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

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

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

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

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

**The Report of the GoM was accepted by the Council.**

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

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

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



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

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

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

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

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

**Agenda Item 9: Issues recommended by GSTN**

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

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

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



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provided. Therefore, this proposal was agreed to be dropped and clause five was deleted from the draft.

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

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

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

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

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

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

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

**The GST Council approved the recommendations made by the ITGRC during its 17<sup>th</sup> meeting.**



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

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

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

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

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

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

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

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

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

14.1 The Secretary presented the Agenda No. 14 i.e., Ad-hoc exemption orders issued under Section 25(2) of the Customs Act, 1962 to be placed before GST Council for information. He informed that in the 26<sup>th</sup> meeting of the GST Council held on 10.03. 2018, it was decided that all the ad-hoc exemption orders issued with the approval of the Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014-Customs dated 19.08. 2014 as was the case prior to the implementation of GST, shall be placed before the GST Council for information. The Secretary informed the Council that two Ad-hoc exemption orders had been issued since last meeting of the GST Council. One order dated

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11/01/2023 pertained to ad-hoc exemption from duty and taxation for the equipment and ammunition used for joint counter terrorism exercise (Tarkash-VI) and second order dated 06/02/2023 pertained to ad-hoc exemption for import of Cheetahs by the National Tiger Conservation Authority, Ministry of Environment, Forest and Climate Change.

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

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

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

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

15.3 The Hon'ble Member from Rajasthan thanked the Hon'ble Chairperson for clearing their dues. He further informed that Rajasthan's AG Audit for the F.Y. 21-22 was about to be completed and requested to release the 80-90% of the total Compensation Cess without AG's certificate and the rest could be adjusted later. The Hon'ble Member also requested to release the amount due to them for the F.Y. 21-22 before 31<sup>st</sup> March in this financial year.

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

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

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

15.7 The Secretary in his concluding remarks stated that they had very long and detailed in- depth deliberations and sincerely thanked each and every Member for taking time out of



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their very busy schedule in the budget session. Especially he thanked Honourable Minister of State of Finance and the Honourable Minister of Finance and Corporate Affairs for taking out time on this holiday and spending so much time and giving guidance. He gave special thanks to Members of the GoMs and their Conveners for their valuable contribution. The recommendations made by the GoMs and approvals given would be taken forward.

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



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**ANNEXURE-1****List of Hon'ble Ministers from States/Uts who participated in the 49th Meeting of the GST Council held on 18th February, 2023**

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

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

*[Signature]*

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22	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs
23	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Finance

**ANNEXURE-2**

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

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

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10	GSTN	Shri Manish Kumar Sinha	CEO
11	GSTN	Shri Dheeraj Rastogi	EVP
12	Government of India	Dr. Amandeep Singh	Additional Director General(Audit)
13	Government of India	Ms. Ashima Bansal	Joint Secretary
14	Government of India	Ms. B.Sumidaa Devi	Joint Secretary
15	Government of India	Shri S.S. Nakul	PS to FM
16	Government of India	Shri Sernya Bhutia	1ST PA TO FM
17	Government of India	Shri Kumar Ravikant Singh	PS to MoS Finance
18	Government of India	Shri Dhruv Narayan Srivastav	1st PA to MoS Finance
19	Government of India	Shri Alkesh Uttam	Additional PS to MoS
20	Government of India	Shri Deepak Kapoor	OSD to Revenue Secretary
21	Government of India	Shri D. P. Misra	OSD to Chairman, CBIC
22	Government of India	Dr N Gandhi Kumar	Director (State Taxes)
23	Government of India	Shri Alok Kumar	Additional Commissioner
24	Government of India	Shri Pramod Kumar	Director

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25	Government of India	Ms Puneeta Bedi	OSD
26	Government of India	Shri Rakesh Dahiya	Deputy Secretary
27	Government of India	Shri Nitesh Gupta	Deputy Commissioner
28	Government of India	Shri Amit Samdariya	Deputy Commissioner
29	Government of India	Ms. Neha Yadav	Deputy Commissioner
30	Government of India	Shri Sunil Kumar	Under Secretary
31	Government of India	Ms. Smita Roy	Technical Officer
32	Government of India	Shri Piyush Kumar Ankit	Technical Officer
33	Government of India	Shri Nitin Gupta	Technical Officer
34	Government of India	Shri Sandesh Lokhande	Technical Officer
35	GSTN	Ms Sanjali Dias	SVP
36	GSTN	Shri Naveen Agarwal	OSD to CEO
37	GSTN	Shri S Mohan	OSD to HR
38	GSTN	Shri Anil Chatwal	Chief Accountant
39	Government of India	Shri Rakesh Kumar Kapur	Consultant in DG(Audit)

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40	GST Council Secretariat	Shri Kshitendra Verma	Director
41	GST Council Secretariat	Shri S.S.Shardool	Director
42	GST Council Secretariat	Shri Joginder Singh Mor	Under Secretary
43	GST Council Secretariat	Ms. Reshma R. Kurup	Under Secretary
44	GST Council Secretariat	Ms. Priya Sethi	Superintendent
45	GST Council Secretariat	Shri Dharambir	Superintendent
46	GST Council Secretariat	Shri Irfan Zakir	Superintendent
47	GST Council Secretariat	Shri Naveen Kumar	Superintendent
48	GST Council Secretariat	Shri Sachin Goel	Superintendent
49	GST Council Secretariat	Ms. Ambika Rani	Superintendent
50	GST Council Secretariat	Shri Niranjana Kishore	Superintendent
51	GST Council Secretariat	Shri Rakesh Joshi	Superintendent
52	GST Council Secretariat	Shri Vijay Malik	Inspector
53	GST Council Secretariat	Shri Padam Singh	Inspector
54	GST Council Secretariat	Shri Rohit Sharma	Inspector

  
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55	GST Council Secretariat	Shri Ashwani Sharma	ASO
56	GST Council Secretariat	Shri Karan Arora	ASO
57	GST Council Secretariat	Shri Tarun	ASO
58	GST Council Secretariat	Shri Pankaj Dhaka	Tax Assistant
59	GST Council Secretariat	Shri Paresh Garg	Tax Assistant
60	GST Council Secretariat	Shri Shyam Bihari Meena	Tax Assistant
61	GST Council Secretariat	Shri Vikas Kumar	Tax Assistant
62	Andhra Pradesh	Shri N. Gulzar	Secretary Finance(CT)
63	Andhra Pradesh	Shri M. Girija Sankar	Chief Commissioner(ST)
64	Andhra Pradesh	Shri K. Ravi Sankar	Commissioner(ST) Policy
65	Arunachal Pradesh	Shri Nakut Padung	Superintendent (GST Cell)
66	Assam	Shri Rakesh Agarwalla	Principal Commissioner of State Tax
67	Bihar	Dr Pratima	Commissioner cum Secretary Commercial Taxes
68	Bihar	Shri Arun Kumar Mishra	Tax Expert Commercial Taxes
69	Bihar	Shri Binod Kumar Jha	Joint Commissioner State Tax

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70	Bihar	Shri Naveen Kumar	PS to Hon'ble Minister
71	Chandigarh	Shri Vinay Pratap Singh	Deputy Commissioner-cum-Excise and Taxation Commissioner
72	Chandigarh	Ms Heena Talwar	Excise and Taxation Officer
73	Chhattisgarh	Shri Bhim Singh	Commissioner of State Tax
74	Chhattisgarh	Shri Tarun Kiran	Deputy Commissioner of State Tax
75	Chhattisgarh	Shri Anand Sagar	PS to Hon'ble Minister
76	Delhi	Dr. S. B. Deepak Kumar	Commissioner (State Tax)
77	Delhi	Shri. Awanish Kumar	Special Commissioner (State Tax)
78	Goa	Shri. S.S.Gill	Commissioner of State Tax
79	Goa	Smt. Sarita S. Gadgil	Additional Commissioner of State Tax
80	Gujarat	Shri. J.P. Gupta	Principal Secretary, Finance Department
81	Gujarat	Shri. Samir Vakil	Chief Commissioner of State Tax (I/c)
82	Gujarat	Shri Riddhesh Raval	Joint Commissioner
83	Haryana	Shri Ashok Kumar Meena	Excise & Taxation Commissioner-cum-Secretary to Government



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84	Haryana	Shri Siddharth Jain	Additional Commissioner, GST, Excise and taxation Department
85	Himachal Pradesh	Shri Bharat Khera	Principal Secretary (Excise & Taxation)
86	Himachal Pradesh	Shri Yunus	Commissioner of State Tax and Excise
87	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise
88	Jammu and Kashmir	Dr. Rashmi Singh	Commissioner State Taxes
89	Jammu and Kashmir	Ms. Ankita Kar	Additional Commissioner State Taxes(Tax Planning, Policy and Advance Ruling )
90	Jammu and Kashmir	Ms. Namrita Dogra	Additional Commissioner State Taxes(Administration and Enforcement)
91	Jharkhand	Ms. Aradhana Patnaik	Principal Secretary (Commercial Tax)
92	Jharkhand	Shri Santosh Kumar Vatsa	Commissioner, Commercial Taxes
93	Karnataka	Ms. C. Shikha	Commissioner of Commercial Taxes
94	Karnataka	Dr. M.P. Ravi Prasad	Additional Commissioner of Commercial Taxes (P & L)
95	Kerala	Shri Ajit Patil	Commissioner of State Tax
96	Kerala	Shri. Abraham Renn S	Additional Commissioner-1

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97	Kerala	Dr. Shyjan D	PS to Hon'ble Minister for Finance
98	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner, State Tax
99	Madhya Pradesh	Ms Tanvi Hooda	Special Commissioner, State Tax
100	Madhya Pradesh	Shri Manoj Kumar Choubey	Joint Commissioner, State Tax
101	Madhya Pradesh	Shri Harish Jain	Assistant Commissioner, State Tax
102	Madhya Pradesh	Shri Dileep Raj Dwivedi	OSD to Hon'ble Minister
103	Maharashtra	Ms Shaila A	Principal Secretary (Financial Reforms)
104	Maharashtra	Shri Rajeev Mital	Commissioner of State Tax
105	Manipur	Shri Y. Indrakumar Singh	Assistant Commissioner of Taxes
106	Meghalaya	Ms Isawanda Laloo	Commissioner of Taxes
107	Meghalaya	Shri. L Khongsit	Additional Commissioner of Taxes
108	Meghalaya	Shri. V R Challam	Assistant Commissioner of Taxes
109	Mizoram	Shri Kailiana Ralte	Commissioner of State Tax
110	Mizoram	Shri R. Zosiamliana	Additional Commissioner of State Taxes
111	Nagaland	Shri. C Lima Imsong	Additional Commissioner of State Taxes

  
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112	Odisha	Shri Vishal Kumar Dev	Principal Secretary, Finance Department
113	Odisha	Shri Nihar Ranjan Nayak	Additional Commissioner of Taxes
114	Punjab	Shri Vikas Partap	Financial Commissioner (Taxation)
115	Punjab	Shri Kamal Kishor Yadav	Commissioner of State Taxes
116	Punjab	Shri Ravneet Khurana	Additional Commissioner of State Taxes (Audit)
117	Puducherry	Shri. M. Raje Saker	Commissioner of State Tax
118	Puducherry	Shri. S. Saravana Kumar	Commercial Tax Officer
119	Rajasthan	Dr Ravi Kumar Surpur	Chief Commissioner, State Tax
120	Rajasthan	Shri Arvind Mishra	Advisor (Additional Commissioner, GST)
121	Sikkim	Shri Manoj Rai	Commissioner (Commercial Taxes)
122	Sikkim	Shri Ajay Raj Gurung	Deputy Commissioner (Commercial Taxes)
123	Tamil Nadu	Thiru N. Muruganandam	Additional Chief Secretary to Government, Finance Department
124	Tamil Nadu	Thiru Dheeraj Kumar	Principal Secretary/Commissioner of Commercial Taxes
125	Tamil Nadu	Thiru K.Gnanasekaran	Senior Additional Commissioner, Commercial Taxes



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126	Telangana	Shri Ronald Ross	Special Secretary (Finance)
127	Telangana	Ms Neetu Prasad	Commissioner of Commercial Taxes
128	Telangana	Shri N Sai Kishore	Additional Commissioner (ST)(Legal)
129	Telangana	Ms. K Rupa Sowmya	Deputy Commissioner (ST) EIU
130	Tripura	Shri Brijesh Pandey	Secretary, Finance
131	Tripura	Ms. Rakhi Biswas	Chief Commissioner of State Tax
132	Tripura	Mr. Ashin Barman	State Admin GST
133	Uttarakhand	Dr. Ahmad Iqbal	Commissioner of State Tax
134	Uttarakhand	Shri Anil Singh	Additional Commissioner of State Tax
135	Uttarakhand	Shri Anurag Mishra	Joint Commissioner of State Tax
136	Uttar Pradesh	Shri Nitin Ramesh Gokaran	Principal Secretary, State Tax
137	Uttar Pradesh	Ms. Ministhy S	Commissioner of State Tax
138	Uttar Pradesh	Shri Paritosh Kumar Mishra	Deputy Commissioner(GST), State Tax HQ
139	Uttar Pradesh	Shri Amit Pandey	P.S. to Hon'ble Finance Minister, UP

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140	West Bengal	Dr Manoj Pant	Additional Chief Secretary, Finance Department
141	West Bengal	Shri Khalid Aizaz Anwar	Commissioner of State Tax
142	West Bengal	Shri Rajib Sankar Sengupta	Senior Joint Commissioner of Revenue
143	West Bengal	Shri Shantanu Naha	OSD to Hon'ble Minister



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## ANNEXURE-3



## Purpose of GoM



## As per Provisions of CGST Act, 2017

Each bench of the Tribunal is composed of one Judicial Member, one Technical Member (Centre) and one Technical Member (State)

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

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

## Hon'ble Supreme Court of India

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

## Group of Ministers (GoM)

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

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

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

## Members of GOM



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

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## Meetings of the GoM



### 1 26th July 2022 (Hybrid mode)

GoM considered the original draft discussed in the 47th meeting of the GST Council  
Took note of various judgments of Hon'ble Supreme Court including order of Supreme Court in CA 3067 of 2004 – R. Gandhi Vs. Union of India, CA No. 8588 of 2019 – Rojer Mathews Vs. Union of India; WP (C) 804 of 2020 – Madras Bar Association Vs. Union of India  
Took note of the Tribunal Reforms Act, 2021 passed by the Parliament, provisions of which govern the appointment of Members and Chairpersons of various Tribunals and their terms and conditions

### 2 17th August 2022 In Bhubaneswar (Physical meeting)

To discuss the issues and finalize the recommendations.

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



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

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



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

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



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

### Member for Selection of Technical Member (Centre) and Judicial Member

Chief Secretary of a State to be nominated by Council for a period of one year.

### Member for Selection of Technical Member (State)

Chief Secretary of the State in which the bench is located

## Recommendation 3/5 : Composition of Benches



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

## Recommendation 4/5 : Qualification of Members



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

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## Suggestions from officer's in 48<sup>th</sup> GST Council meeting



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

## Recommendation 5/5 : Retirement Age & Number of Benches



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



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ANNEXURE-4



**Summary of discussions on  
Agenda 4 in Officers' Meeting held on  
17<sup>th</sup> February 2023**

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Agenda No	Issue/Proposal	Status during Officers Meeting
4(i) [Vol 1- Pg 134-135]	<b>Amendment in Section 23 of CGST Act, 2017</b> <ul style="list-style-type: none"> <li>the proposed amendment in section 23 of CGST Act may be limited to giving over-riding effect to only sub-section (2) of section 23 over sub-section (1) of section 22 and section 24 of CGST Act</li> <li>amendment may be made in Finance Bill, 2023 accordingly.</li> </ul>	<a href="#">Agreed</a>
4(ii) [Vol 1- Pg 136-138]	<b>Amendment to Section 62 of CGST Act, 2017</b> <ul style="list-style-type: none"> <li>amendment may be made in section 62 of CGST Act, 2017                             <ul style="list-style-type: none"> <li>to increase the time period of 30 days specified under section 62(2) to 60 days.</li> <li>to insert a proviso to section 62(2) to provide that assessment order shall also be deemed to have been withdrawn if the concerned returns are filed beyond the period of 60 days, but within an additional period of 60 days, with an additional late fee of Rs. 100 per day during this additional period of 60 days.</li> </ul> </li> </ul>	<a href="#">Agreed</a>

Agenda No	Issue/Proposal	Status during Officers Meeting
4(ii) [Vol 1- Pg 136-138]	<ul style="list-style-type: none"> <li>an amnesty scheme may be provided through a notification under section 148 of CGST Act for conditional deemed withdrawal of assessment orders for past cases where the concerned returns could not be filed within 30 days of the assessment order but have been filed along with due interest and late fee upto a specified date, irrespective of whether appeal has been filed or not against the assessment order, or whether the said appeal has been decided or not.</li> <li>The specified date to be finalized in consultation with GSTN, based on system readiness on the portal.</li> </ul>	
4(iii) [Vol 1- Pg 139-140]	<b>Change in Place of Supply of transportation of goods under Section 13(9) of IGST Act, 2017</b> <ul style="list-style-type: none"> <li>Section 13(9) of the IGST Act may be deleted to change the place of supply of services of transportation of goods, in cases where location of supplier or location of recipient is outside India, from 'destination of goods' to the default rule under section 13(2) of IGST Act, i.e. 'location of the recipient' of services.</li> </ul>	<a href="#">Agreed</a>



CHAIRMAN'S INITIALS

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

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



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Agenda No	Issue/Proposal	Status during Officers Meeting
4(vi) [Vol 1- Pg 153- 156]	<p><b>Extension of time limit for application for revocation of cancellation of registration</b></p> <ul style="list-style-type: none"> <li>time limit for making an application for revocation of cancellation of registration may be raised from 30 days to 90 days.</li> <li>where the registered person fails to apply for such revocation within 90 days, the said time period may be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of an Additional / Joint Commissioner, on sufficient cause being shown, and for reasons to be recorded in writing, for a further period not exceeding 180 days.</li> <li>timelines for filing of application for revocation and extension thereof may not be hard-coded in the Act and instead, may be prescribed through the Rules.</li> <li>amendments may be carried out in sub-section (1) of section 30 of the CGST Act and sub-rule (1) of rule 23 of the CGST Rules accordingly.</li> <li>notification may be issued under section 148 of CGST for providing an amnesty in the past cases where registrations have been cancelled upto <b>31<sup>st</sup> December, 2022</b>, by conditionally allowing such persons to file application for revocation of cancellation of registration by <b>30<sup>th</sup> June, 2023</b>.</li> <li>Final dates for this amnesty scheme to be decided in consultation with GSTN, based on system readiness on the portal for the same.</li> </ul>	<u>Agreed</u>

Agenda No	Issue/Proposal	Status during Officers Meeting
4(vii) [Vol 2- Pg. 07- 09]	<p><b>Extension of time limit under sub-section (10) of section 73 of CGST Act for FY 2017-18, 2018-19 and 2019-20</b></p> <ul style="list-style-type: none"> <li>Considering the delay in scrutiny, audit and assessment process for the FY 2017-18, 2018-19 and 2019-20 due to restrictions and difficulties faced in COVID-19 period, there may be a need to provide some additional time under section 73(10) for the said financial years in such a manner so that there is no bunching of last dates for issuance of SCN/order under section 73 for these financial years as well as for the subsequent financial years.</li> <li>The time limit under section 73(10) of CGST Act for the FY 2017-18, FY 2018-19 and FY 2019-20 may be extended as below, by issuance of a notification under section 168A of CGST Act: <ul style="list-style-type: none"> <li>For FY 2017-18, the time limit may be extended from the present 30<sup>th</sup> September 2023 to 31<sup>st</sup> December 2023;</li> <li>For FY 2018-19, the time limit may be extended from the present 31<sup>st</sup> December 2023 to 31<sup>st</sup> March 2024</li> <li>For FY 2019-20, the time limit may be extended from the present 31<sup>st</sup> March 2024 to 30<sup>th</sup> June 2024</li> </ul> </li> </ul>	<u>Agreed</u> . One view was that already the extension in time limit to issue SCN/orders under section 73(10) has been provided for FY 2017-18. Extending the timelines further will not extend any tangible benefit. On the other hand, this will be perceived as adversarial for taxpayers and therefore, the said extension of time limit under section 73(10) may not be provided.



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## Ratification of Notifications and Circulars

### Agenda 3: Ratification of Notifications, Circulars etc.

[Vol 1- Pg. 131-133]

Act/Rules	Notifications/Circulars Nos.	Description/Remarks
CGST Act/ CGST Rules	Two (02) Central Tax Notifications issued (No. 26/2022 and 27/2022) & Four (04) Central Tax (rate) Notifications issued (No. 12/2022 to 15/2022)	<p><b>Amendments to CGST Rules carried out and notifications issued to implement various decisions of GST Council taken in 48<sup>th</sup> meeting. Some of the important amendments are:</b></p> <ol style="list-style-type: none"> <li>amendments have been made in Rule 8 and Rule 9 of CGST Rules, 2017 dealing with the procedure of seeking registration</li> <li>amendments have been made in Rule 12 of CGST Rules, 2017 to the effect that the person having TDS/TCS registration can also make a request for cancellation of such registration.</li> <li>Rule 88C inserted in CGST Rules, 2017 prescribing manner of dealing with difference in liability reported in statement of outward supplies and that reported in return</li> <li>Rule 109C has been inserted in CGST Rules, 2017 to permit the withdrawal of appeal, before the issuance of the order or SCN, by filing the application in FORM GST APL-01/03W.</li> <li>Form APL-01/03W (Application for Withdrawal of Appeal Application) has been prescribed for filing an application for the withdrawal of the appeal.</li> <li>Form DRC-01 has been prescribed in view of the newly inserted Rule 88C for communicating the discrepancy between GSTR 1 and GSTR 3B (Part A) and filing the reply by the taxpayer (Part B)</li> </ol>
UTGST Act	Four (04) Union Territory Tax (rate) Notifications issued (No. 12/2022 to 15/2022)	Notifications to implement various decisions of GST Council taken in 48 <sup>th</sup> meeting

### Agenda 3: Ratification of Notifications and Circulars

[Vol 1- Pg. 131-133]

Act/Rules	Notifications/Circulars Nos.	Description/Remarks
IGST Act	Four (04) Integrated Tax (rate) Notifications issued (No. 12/2022 to 15/2022)	Notifications to implement various decisions of GST Council taken in its 48 <sup>th</sup> meeting
Circulars	Eight (08) Circulars issued (No. 183/15/2022-GST dated 27.12.2022 to 190/02/2023-GST dated 13.01.2023)	<p>Circulars to implement various decisions of GST Council in its 48<sup>th</sup> meeting. <b>Some of the important issues in the circulars are:</b></p> <ol style="list-style-type: none"> <li>Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19</li> <li>Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017</li> <li>Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation</li> <li>Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016</li> <li>Prescribing manner of filing an application for refund by unregistered persons</li> <li>Clarification regarding GST rates and classification of certain goods</li> <li>Clarification regarding GST rates and classification of certain services</li> </ol>

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

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**Recommendations of the  
Law Committee**

**Law Committee  
Recommendations  
for  
Trade facilitation and  
Reducing litigation**



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

[Vol 1- Pg. 136-138]

### Issue:

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

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

[Vol 1- Pg. 136-138]

### Proposal:

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



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

[Vol 1- Pg 141-147]

- LC has also recommended:
  - ❖ **Amnesty for non-filers of FORM GSTR-4**
    - late fee may be waived which is in excess of Rs. 500/- (Rs. 250/- under CGST and Rs. 250/- under SGST) and may be fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who failed to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for FY from 2019-20 to 2021-22, by the due date but furnish the said return between **01.05.2023 to 31.07.2023**
  - ❖ **Amnesty for non-filers of FORM GSTR-9**
    - late fee may be waived which is in excess of Rs. 20,000/- (Rs. 10,000/- under CGST and Rs. 10,000/- under SGST / UTGST) for the registered persons who failed to furnish the annual return by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between **01.05.2023 to 31.07.2023**
  - ❖ **Amnesty for non-filers of FORM GSTR-10**
    - late fee may be waived which is in excess of Rs. 1000/- (Rs. 500/- under CGST and Rs. 500/- under SGST) for the registered persons who failed to furnish the final return in FORM GSTR-10 by the due date but furnish the said return **between 01.05.2023 to 31.07.2023**
- Final time period for filing of the returns under this amnesty scheme to be decided in consultation with GSTN, based on system readiness on the portal for the same.
- **This will provide an opportunity to taxpayers, specially smaller taxpayers, who could not file pending returns, to furnish their pending returns with reduced burden of late fee and regularise their businesses.**

**Agenda 4(vi): Extension of time limit for application for revocation of cancellation of registration (1/2)**

[Vol 1- Pg. 153-156]

**Issue:**

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



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

**Proposal:**

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

**Agenda 4(iii): Change in Place of Supply of transportation of goods under Section 13(9) of IGST Act, 2017** [Vol 1- Pg. 139-140]

**Issue:**

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

**Proposal:**

- ❖ LC has recommended
  - Section 13(9) of the IGST Act may be amended to change the place of supply of transportation of goods from 'destination of goods' to the default rule under section 13(2) of IGST Act, i.e. 'location of the recipient' of services.
- This would rationalize the provision of place of supply for services of transportation of goods and would ensure that both Indian Shipping Lines and Foreign Shipping Lines have identical liability to pay or to not pay IGST on transportation of goods by vessel from India to outside India and vice versa.

  
CHAIRMAN'S INITIALS



## Law Committee Recommendations relating to streamlining compliances

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

[Vol 1- Pg. 134-135]

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

#### Proposal:

- ❖ LC has recommended that
  - the proposed amendment in section 23 of CGST Act be limited to giving over-riding effect to sub-section (2) of section 23 over sub-section (1) of section 22 and section 24 of CGST Act.
  - Amendment may be made in Finance Bill, 2023 accordingly.
- This would remove the unintended anomaly emerged due to amendment in section 23 proposed in Finance Bill, 2023 and will ensure that amended section 23 does not exempt the person dealing exclusively in exempt goods and/or services from obtaining registration if he is liable to pay tax under reverse charge on some supply of goods or services received by him.

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

[Vol 1- Pg. 148-152]

#### Issue:

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



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**Agenda 4(v): Amendment in CGST Rules and Notification for biometric-based Aadhaar authentication of registration applicants (2/2)** [Vol 1- Pg. 148-152]

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

**Proposal**

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

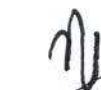
**Agenda 4(vii): Extension of time limit under sub-section (10) of section 73 of CGST Act for FY 2017-18, 2018-19 and 2019-20 (1/2)** [Vol 2- Pg. 07-09]

**Issue:**

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

**Deliberations by LC:**

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



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

[Vol 2- Pg. 07-09]

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

**Proposal:**

- ❖ LC recommended that the time limit under section 73(10) of CGST Act for the FY 2017-18, 2018-19 and 2019-20 may be extended as below, by issuance of a notification under section 168A of CGST Act:
  - For FY 2017-18, the time limit under section 73(10) may be extended from the present 30<sup>th</sup> September 2023 to 31<sup>st</sup> December 2023.
  - For FY 2018-19, the time limit under section 73(10) may be extended from the present 31<sup>st</sup> December 2023 to 31<sup>st</sup> March 2024
  - For FY 2019-20, the time limit under section 73(10) may be extended from the present 31<sup>st</sup> March 2024 to 30<sup>th</sup> June 2024
- This would provide additional time to tax administration for issuance of demand notices and passing orders in respect of cases detected during scrutiny and audit, considering the delay in scrutiny and audit process due to COVID.

THANK YOU

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## ANNEXURE-5

49<sup>th</sup> GST Council MeetingAgenda item 5

Recommendations of Fitment Committee  
on  
Goods and Services

18<sup>th</sup> February, 2023

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

## Goods-Changes Recommended (5):

Agenda No.	Issue/Proposal	Status after officers' meeting
5 (Annexure-I) <u>S.No. 1</u> Page No. 157	<ul style="list-style-type: none"> <li>➤ GST rate on rab may be reduced from 18% to 5% (if sold in pre-packaged and labelled form) and NIL (if sold in loose form) , in same line as is available to jaggery.</li> <li>➤ Past practice may be regularised on <i>as is</i> basis.</li> </ul>	Agreed
5 (Annexure-I) <u>S.No. 2</u> Page No. 158-160	<ul style="list-style-type: none"> <li>➤ GST rate on Pencil Sharpeners (HSN 8214) may be reduced from 18% to 12%.</li> </ul>	Agreed


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Agenda No.	Issue/Proposal	Status after officers' meeting
5 (Annexure-I) S.No. 3 Page No. 160	<ul style="list-style-type: none"> <li>➤ To insert a proviso in the notification No. 104/94- Customs dated 16.03.94 that if tracking device is <u>already affixed</u> on container, no separate IGST shall be levied on such affixed device and the 'Nil' IGST treatment available for the container under above notification shall also be available subject to existing conditions.</li> <li>➤ However, such tracking devices imported <u>separately</u> for affixing on the containers, shall attract applicable IGST</li> </ul>	Agreed
5 (Annexure-I) S.No. 4 Page No. 161	<ul style="list-style-type: none"> <li>➤ To amend the entry <u>41 A</u> in Compensation cess notification to cover <u>coal rejects</u> supplied to and by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has been availed by any person.</li> </ul>	Agreed

Agenda No.	Issue/Proposal	Status after officers' meeting
5 (Annexure-I) S.No. 5 Page No. 161-162	<ul style="list-style-type: none"> <li>➤ GST rate on millet-based health mix consisting at least 70% of millets may be reduced from 18% to nil if it is sold in loose form or 5%, if it is sold in pre-packaged and labelled form.</li> <li>➤ The goods may be classified under HS 1901 or 2106 depending on the substances added to the millet flour.</li> </ul>	<ul style="list-style-type: none"> <li>• It was opined that – <ul style="list-style-type: none"> <li>➤ the product under consideration i.e. health mix is widely consumed by upper class.</li> <li>➤ there is possibility of coverage of large variety of products under this description, which may not be the intent of the proposal.</li> <li>➤ considering this proposal may create exception from similarly placed products.</li> <li>➤ as it is a mixture of various ingredients, it is not comparable with Sattu.</li> </ul> </li> <li>• Officer from Karnataka suggested to remove the word 'health mix' and re-word the proposed entry.</li> <li>• Accordingly, it is felt that the issue need to be further deliberated</li> </ul>

Goods-No change recommended (2) :

Agenda No.	Issue/Proposal	Status after officers' meeting
5 (Annexure-II) S.No. 1 Page No. 163	<ul style="list-style-type: none"> <li>➤ Supply of tendu leaves by a plucker (agriculturist) to any registered person attracts 18% GST under RCM. Request is to reduce it to Nil.</li> <li>➤ After deliberations on representations of Odisha, M.P. and Chhattisgarh, Fitment Committee recommended to maintain <i>status quo</i>.</li> </ul>	Officers from all states agreed to the proposal except officers from Odisha and Telangana who requested to reduce the rate to NIL.
5 (Annexure-II) S.No. 2 Page No. 163-164	<ul style="list-style-type: none"> <li>➤ Request is to reduce the GST on Ship/Vessel breaking from 18% to less than 10%.</li> <li>➤ ITC of GST paid on ships/vessels imported for breaking is available to ship-breakers, which can be used to set off liability which arises when ship breakers sells scrap. Therefore, Fitment Committee recommended to maintain <i>status quo</i>.</li> </ul>	Agreed



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**Goods- Deferred Issue (1):**

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

**Services- Change recommended (2):**

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

## Goods

• **Total 8 issues examined**

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

## Services

• **Total 2 issues examined.**

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



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Recommendations of the Fitment Committee:  
Goods

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

1. Rab : (page 157)

- On the recommendations of 48<sup>th</sup> GST Council, a clarification was issued that rab is classifiable under heading 1702 attracting GST rate of 18%.
- A request has been received:
  - to create a special entry for rab, and
  - to treat rab on similar lines of jaggery (Nil rate in loose form; 5% in prepackaged & labelled form) stating that it is a liquid form of jaggery.
- Fitment Committee recommendations:-
  - GST rate on rab may be reduced to 5% if sold in prepackaged and labelled form and nil, if sold in loose form.
  - clarifying that the issue for the past periods may be regularized on *as is basis*.

Agenda 5 (Annexure-I)

2. Pencil Sharpener (Pages 158-160)

- Based on report of *GaM on Rate Rationalization*, GST Council in its 47<sup>th</sup> Meeting recommended to increase GST rate on Pencil Sharpeners (CTH 8214) from 12% to 18% in order to remove the inverted duty structure.
- During the discussion in 48<sup>th</sup> meeting, on the anomalous entry for pencil sharpeners, it is requested by few members to re-consider the increase in GST rate of pencil sharpener on the ground of its use by school children. Accordingly, the issue was referred to Fitment Committee.
- Meanwhile, a domestic manufacturer represented that they have to discharge 18% on mixed supply of pencil set, which includes sharpeners (18%), pencils (12%), erasers (5%), due to 18% rate on pencil sharpener.
- For instance, for a mixed pack costing INR 125, the price of sharpener is in the range of INR 3 to INR 5, but GST on entire pack would be 18%.
- Fitment Committee recommendation  
GST rate on Pencil Sharpeners (CTH 8214) may be reduced from 18% to 12%.



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## Agenda 5 (Annexure-I)

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

- Notification No. 104/94- Customs dated 16.03.1994 provides exemption from *Customs Duty* and *IGST* to imported containers of durable nature provided the same are re-exported within a period of 6 months.
- Shippers requested for exemption for tracking devices/data loggers ( HSN 8526 91) as is available to import of containers under above notification on the ground that these goods will be fixed/installed on containers.
- The GST rate on goods falling under HSN 8526 91 described as "Radio-navigational aid apparatus" is 18%.
- **Fitment Committee recommendations:**
  - insert a proviso in the notification that if such device is already affixed on container, no separate IGST shall be levied on such affixed device and the 'Nil' IGST treatment available for the container under notification No. 104/94-Customs shall also be available subject to existing conditions.
  - However, tracking devices imported separately for affixing on the containers, shall attract applicable IGST.

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## Agenda 5 (Annexure-I)

### 4. Coal Rejects : (page 161)

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

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## Agenda 5 (Annexure-I)

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

(Pages 161 -162)

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

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

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

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

#### • Fitment Committee Recommendations:

Status quo to be maintained.

## Agenda 5 (Annexure-II)

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

- Presently, ships/vessels for breaking up attracts 18% GST. This rate was recommended by the Council in 14<sup>th</sup> meeting
- Now, request is to reduce the rate to less than 10%.
- Ministry of Shipping represented that :
  - ship breaking yards are upgraded to EU standards and are now in consonance with Hongkong convention, which is making India un-competitive vis-à-vis neighbouring countries who have not adopted such standards
  - final product of ship breaking industry is ferrous waste and scrap, which also attracts 18%. Thus, if IGST on ships/vessels for breaking is reduced to less than 10%, it would not lead to inversion.
- ITC of GST paid while importing ships/vessels is available to ship-breakers, which can be used to set off liability which arises when ship breakers sell scrap.

#### • Fitment Committee Recommendations:

Status quo to be maintained.

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

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

- During 48<sup>th</sup> GST council meeting, on the issue of compensation cess leviable on SUVs, it was suggested by few of the members to deliberate about compensation cess on other utility vehicles such as MUV, XUV. Accordingly, the issue was referred to Fitment Committee.
- Fitment Committee examined the matter in detail in meeting dated 03.02.2023 and 07.02.2023 including the issue that all utility vehicles provided they satisfy the specifications of engine capacity > 1500cc, length > 4000mm and ground clearance > 170mm and also other motor vehicles covered under 52A, for levy of compensation cess rate of 22%.

#### • Fitment Committee Recommendations:

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

## Recommendations of the Fitment Committee:

### Services

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

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

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

#### Recommendations of Fitment Committee

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

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

## Agenda 5 (Annexure-IV)

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

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

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## ANNEXURE-6



Laying the final report  
of  
**Group of Ministers**  
on  
**"Capacity Based Taxation and Special Composition Scheme  
in certain sectors in GST"**

18<sup>th</sup> February 2023

## Background



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

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

Dt: Ministry of Finance  
O.M. dated 24<sup>th</sup> May 2021

## ToR



## Terms of Reference:

- a. To examine the possibility of levy of GST based on capacity of manufacturing unit and special composition schemes in certain evasion prone sectors like pan masala and gutkha, brick kilns, sand mining etc with reference to the current legal provisions
  - b. To examine whether any change is required in the legal provisions to allow such levy
  - c. To examine the impact of such levy on the destination nature of current GST design
  - d. To examine any other administrative or systemic mechanism to plug leakages in these sectors
  - e. To examine the impact of levy on reverse charge on mentha oil and to examine if there could be other class of supplies that could be subjected to reverse charge to augment revenue
- Three meetings of Group of Ministers were held to deliberate on the issue.
- 1<sup>st</sup> Meeting - 06<sup>th</sup> July 2021 on virtual mode
  - 2<sup>nd</sup> Meeting - 31<sup>st</sup> August 2021 on virtual mode
  - 3<sup>rd</sup> Meeting - 07<sup>th</sup> July 2022

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## Broad Challenges in implementation of Capacity Based levy



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

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

## International Practices



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

## Options for Enhancing Compliance



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



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## Options for Enhancing Compliance (Contd.)



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

## Options for Enhancing Compliance (Contd.)



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

## Options for Enhancing Compliance (Contd.)



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

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## Options for Enhancing Compliance (Contd.)



- To curb fake invoicing and fraudulent exports thereof for claiming undue refund, GoM suggested that for commodities like pan masala, gutkha, chewing tobacco, and similar other goods, the IGST refund route on exports be closed, similar to the recommendation made for Mentha Oil and if necessary, exports may only be allowed against LUT with the consequential refund of accumulated input tax credit.
- Since illicit trade in tobacco sector is a global phenomenon, GoM deliberated on the international best practices to tackle this menace by putting in place a technology driven Track and Trace mechanism, for all the tobacco products, preferably by the end of 2023, while carrying out the associated infrastructural, systemic & legal feasibility studies to implement the same.

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# MINUTE BOOK

Shipra



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