

Minutes of the 52nd meeting of the GST Council held on 07th October, 2023

The 52nd meeting of the GST Council was held on 7th October, 2023 under the Chairpersonship of the Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman at Sushma Swaraj 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, 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 52nd meeting of the GST Council:

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6.	Ad-hoc Exemptions Order(s) issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information
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	Table Agenda:- Exemption from 5% IGST levy for foreign flag foreign going vessels being operated by an entity not registered under GST in India when it converts to coastal run
9.	Agenda Item 9 (Addendum to Agenda Volume-II): Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route.
10.	General discussion with the permission of the Chair

1.3 The Secretary to the GST Council (hereinafter called 'The Secretary'), welcomed all the Hon'ble Members of the Council and participating officers to the 52nd meeting of the GST Council. He welcomed incoming Chairman of the Central Board of Indirect Taxes and Customs (CBIC), Sh. Sanjay Kumar Agarwal to his first GST Council meeting as Chairman, CBIC.

1.4 The Secretary stated that the important agendas of the day pertained to setting up of GST Tribunals and pending issues like taxability of Extra Neutral alcohol for deliberations besides other Law Committee and Fitment Committee agendas and other routine agenda items.

1.5 The Secretary requested the States who were yet to pass the amendments in SGST/UTGST Acts corresponding to amendments in the CGST Act, 2017, IGST Act, 2017 pertaining to Casinos, Online Gaming and Horse racing to do so on priority as otherwise it would lead to legal difficulties in revenue sharing with these States. He informed that this matter was discussed in the Officers' Meeting also a day before.

1.6 The Secretary sought the permission of the Chair to begin deliberations on each agenda item and invited the Joint Secretary, GST Council Secretariat to take the Council through the agendas.

2. Agenda item 1: Confirmation of the Minutes of 50th meeting of the GST Council held on 11th July, 2023 and 51st meeting of the GST Council held on 2nd August, 2023

2.1 The Joint Secretary, GST Council Secretariat informed the Council that the State of Kerala had requested for changes in in para 6.19 and para 12.12 of the Agenda Item 5 (Second Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming) of the draft Minutes of the 50th meeting of the GST Council as follows;

2.2 The State of Kerala had requested that para 6.19 and 12.12 of the minutes may be redrafted as below:

6.19: The Hon'ble Member from Kerala raised concerns about the impact of taxing on the basis of GGR mechanism on lotteries as it could lead to litigation. He stated that this approach may affect the taxation of other actionable claims.

12.12 It may be noted that the proposal of Kerala is to set up 3 State Benches with locations at Thiruvananthapuram, Ernakulam and Kozhikode. In the initial phase, as suggested in this meeting, due to lesser pendency of cases, two benches even with half

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the members may be made functional at Thiruvananthapuram and Ernakulam. Since the other areas in the state are quite far from these two locations, there may be provisions for these benches to conduct sittings in other locations such as Kozhikode also to hear the cases belonging to those locations.

2.3 The Council approved the changes suggested by the State of Kerala in para 6.19 and para 12.12 of the minutes of the 50th meeting of the GST Council.

Decision: The Council adopted the Minutes of the 50th meeting of the GST Council held on 11th July, 2023 and 51st meeting of the GST Council held on 2nd August, 2023 with changes as detailed in para 2.2 above.

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

3.1 The Joint Secretary, GST Council Secretariat took up the next agenda pertaining to the Ratification of the Notifications, Circulars and Orders issued by the GST Council and decisions of GST Implementation Committee for the information of the Council (Page 220-242 of the Volume-I). She stated that this agenda was discussed in the officers meeting held yesterday and there was consensus on the same. She requested the Council to ratify the Notifications, Circulars and Orders issued and take note of the decisions of the GST Implementation Committee (GIC).

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

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

4.1 The Secretary took up the next agenda for the consideration of the GST Council. He informed that these agendas were discussed in the Officers' meeting held on 6th of October 2023 and there was an agreement among the officers on most of the issues. The Principal Commissioner, GST Policy Wing made the detailed presentation (attached as **Annexure-3**) giving an over view of the recommendations made by the Law Committee, as well as the gist of the discussions held in the Officers' meeting.

Agenda Item 3(i): Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals.

4.2 The Pr. Commissioner, GST Policy Wing, stated that vide the Finance Act, 2023, amendments to section 109 and 110 of the CGST Act, 2017 were carried out in respect of GST Appellate Tribunal (GSTAT) and the same were notified vide Notification No. 28/2023-Central Tax dated 31st July, 2023. Subsequently, a proposal was sent by the Department of Revenue to the Hon'ble Chief Justice of India with a request to Chair or to nominate a Judge of the Supreme Court to Chair the Search-cum-Selection Committee (ScSC) to make

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recommendations for appointment of Judicial Members and Technical Member (Centre) of GSTAT and to nominate a retired Judge of Supreme Court or a retired Chief Justice of High Court as a Member of ScSC. In response, the Registrar of Hon'ble Supreme Court of India observed that certain provisions of the GST Appellate Tribunal regarding maximum age limit for the posts of President and Members and the provision relating to eligibility of an Advocate with a standing of 10 years at the Bar for appointment as a Judicial Member need to be aligned with the Tribunal Reforms Act, 2021. Accordingly, the issue of alignment of the provisions of GST Appellate Tribunal with the Tribunal Reforms Act & Tribunal (Condition of Service) Rules, 2021, was placed before the Law Committee. Law Committee approved the following amendments to section 110 of the CGST Act, 2017:

110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.

1. A person shall not be qualified for appointment as—

(a)...(b).....

(i).....

ii.

iii. has been an advocate for ten years with substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court;

(c)

(d)...

Provided

...

Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as the President or the Member.

9. Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the President of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.

10. Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Judicial Member, Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of sixty-seven years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.

4.3 The Pr. Commissioner, GST Policy Wing, further stated that the issue was discussed in officers' meeting and agreed to. It was also noted in the Officers' meeting that there would

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not be a need for any amendment in SGST Acts.

4.4 The Hon'ble Member from Delhi agreed to the change in age limit for the posts of President and Members. She enquired about having advocates as Members in GSTAT as earlier it was proposed to have only Judges and not advocates.

4.5 The Pr. Commissioner, GST Policy Wing clarified that Advocates will be eligible for appointment as Judicial Members only and not as Technical Members in GSTAT to align it with other Tribunals as pointed out by the Chief Justice of Hon'ble Supreme Court.

4.6 The Hon'ble Member from Bihar mentioned that even though they have reservations about having advocates with 10 years of experience as Member, GSTAT, considering the number of pending cases, and the need to establish the Tribunal without delay, they support the proposal.

4.7 The Hon'ble Member from West Bengal supported the proposal pointing out that an Advocate with 10 years of experience can even become Judge of the High Court and so there should be no problem in selecting such Advocates as Judicial Members of the Tribunal.

4.8 The Hon'ble Member from Gujarat suggested that all processes and proceeding in the GST Tribunal should be made online and portal-based including the Tribunal's hearings. These measures will simplify and expedite the process and will increase the reach of the Tribunal.

4.9 The Hon'ble Member from Tamil Nadu stated that though they agreed with the extension of age limit of the President and Members, however, the Hon'ble Madras High Court has considered exclusion of lawyers for consideration as members of GST Appellate Tribunal is not ultra vires and the issue is before the Supreme Court, so it may be considered by the Council after the final verdict of the Hon'ble Supreme Court.

4.10 The Secretary informed that as per the decision of the Council, a letter was written to the Hon'ble Supreme Court to nominate a Chairperson and a Member for the ScSC for selecting the Technical and Judicial Members. In response to the letter, Office of the Chief Justice of India pointed out that the present law for GSTAT is not aligned with the Tribunal Reforms Act, 2021. Due to this, it could be subject to challenge and the Council may reconsider the said issues. Therefore, the issue was brought before the Council.

4.11 The Hon'ble Chairperson stated that a letter had been received from Hon'ble Supreme Court with regard to issue of selecting Advocates as Members of the GSTAT. However, the Council may in future review its decision based on the judgement which would be passed by the Supreme Court. She also welcomed the suggestion of Gujarat to make the entire process online and portal-based.

Decision: The Council agreed with the said recommendations of the Law Committee alongwith the proposal to make the processes of Tribunal online and portal-based.

Agenda Item 3(ii): Seeking clarity on various issues :

A . Regarding taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company:

4.12 The Pr. Commissioner, GST Policy Wing stated that the services that are provided by the director to a company by way of providing personal guarantee to banks/ financial institutions in order to secure credit facilities even without any consideration, will fall under

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the category of supply of services. Therefore, the same was taxable under GST. However, as per the mandate of RBI, as per Para

2.2.9 of RBI Master Circular RBI/2021-22/121 dated 9th November, 2021 regarding guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns, no consideration can be charged by the director from the company for providing the bank guarantee for the purpose of sanctioning of credit facilities to the said company and therefore, no transaction value can be attributed to the said service being provided by the Director.

4.13 Accordingly, it appears that when no consideration is paid by the company to the director in any form, directly or indirectly, for providing guarantee to the bank/ financial institutes on their behalf, as per mandate of RBI, the open market value of the said transaction/ supply may be treated as zero. In such a scenario, the taxable value of the said supply as per section 15 of the CGST Act, 2017 read with rule 28 of the CGST Rules, 2017, may be treated as zero, and no tax may be payable on such supply of service by the director to the company. There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In such cases, as per the RBI guidelines provided in Para 2.2.9 (c) of RBI's Circular No. RBI/2021-22/121 dated 9th November, 2021, remuneration can be paid to such directors/ guarantors for providing the bank guarantee.

4.14 In all these cases, the taxable value of such supply of service may be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.

4.15 He stated that the Law Committee deliberated on the issue and recommended issuing a circular to clarify the same as above.

B . Regarding taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company.

4.16 The Pr. Commissioner, GST Policy Wing stated that providing corporate guarantee between the related companies, including between 'holding company' and 'subsidiary company', even without any monetary consideration, in the course of furtherance of business, is taxable supply as supply of services provided between related persons, as per Schedule I of the CGST Act 2017. In such cases of supply of services between related persons, the taxable value of the supply has to be determined as per Rule 28 of the CGST Rules, 2017 which is mainly based on the open market value of such supply or as per value of services of like kind and quality or as per Rule 30 or 31 of CGST Rules, 2017. Field formations as well as the taxpayers are finding it difficult to arrive at the open market value for such supply of services under Rule 28 of CGST Rules, 2017 as corporate guarantees, unlike bank guarantees, are specific and peculiar to a particular corporate group or company and therefore external third-party comparisons may not be available or relatable. While in cases, where the recipient is eligible for full input tax credit, as per the second proviso to the rule 28 of CGST Rules, 2017, the value declared in the invoice, if any, shall be deemed to be

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the open market value of the said supply of services, however, in cases, where the recipient is not eligible for full input tax credit, then there was difficulty in determining the open market value.

4.17 The matter was deliberated by the Law Committee and the Law Committee recommended to provide for specific valuation rule for such supply of services by inserting following sub-rule (2) in Rule 28 of CGST Rules, 2017:

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. -

.....

2. Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.

4.18 The Law Committee also recommended to clarify the applicability of the proposed sub-rule (2) of the rule 28 of CGST Rules, 2017 vide a circular.

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

Agenda Item 3(iii): Providing a special procedure for condonation of delay in filing of appeals against demand orders passed until 31st March, 2023.

4.19 The Pr. Commissioner, GST Policy Wing stated during the initial years of implementation of GST, a number of appeals against demand orders could not be filed within the specified time period i.e., within the limitation period of three months under Section 107(1) of the CGST Act, 2017 and the permissible delay condonation period of one month u/s Section 107(4) of the CGST Act, 2017 due to various reasons. The law prescribes the common portal as the valid mode of service of notices and orders and no physical service of these notice/orders was made mandatory. In many cases, the common portal was not accessed by the taxpayers and hence taxpayers were not aware of the notices/ orders issued to them through the common portal. In many cases, the email ID or mobile numbers used belonged to CAs or tax practitioners. It had also resulted in losing track of orders/notices served on common portal/email. Many of the taxpayers came to know about demand orders only upon initiation of recovery proceedings under section 79 of the CGST Act, 2017 i.e., after lapse of time prescribed for filing of appeals. Many of these appeals filed beyond the specified time period are either pending with the appellate authorities or were rejected earlier for non-adherence to time period specified under Section 107(1) of the CGST Act, 2017. At the same time, the recovery books of the authorities are bulging without sufficient recovery. As the appeals are likely to be rejected even if they are filed, in view of limited power of the appellate authority to condone any delays, the pre-deposit amount is also not being realized in the books of the government. If such appeals are allowed by condoning the delay, then a large number of such taxpayers are likely to come forward and pay the pre-deposit amount. It is also to be mentioned that due to the non-constitution of GST Appellate Tribunals, the only remedy available to the taxpayers was approaching the Hon'ble High Courts, which might not be always possible for small and medium taxpayers.

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Law Committee recommended providing a special procedure under section 148 of CGST Act, for taxable persons to file appeal till 31st December 2023, who could not file an appeal under section 107 of the said Act against the order passed on or before the 31st day of March, 2023 by the proper officer under section 73 or 74 of the said Act and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107, subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute by the said person, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. He also informed that this was agreed to in the Officers' meeting held on 6th October 2023, however, it was recommended in the officers' meeting that time for filing may be kept as 31st January 2024, instead of 31st December 2023, in the said special procedure for providing more time to the taxpayers.

4.20 The Hon'ble Member from Uttar Pradesh expressed his agreement with the proposal.

4.21 The Hon'ble Member from Tamil Nadu agreed that the proposal is a welfare measure towards the traders but also raised his concern that it will reopen the cases of the past six years involving arrears. He also informed that Tamil Nadu has taken various measures for collecting GST arrears and if amnesty is given, it will retard their collection drive. He further suggested that the amnesty should be given in such a way that interests of revenue are properly balanced with interests of taxpayers and for that pre-deposit may be set at 20%.

4.22 The Hon'ble Member from Maharashtra supported the recommendation of the Law Committee stating that Maharashtra has more than 13,900 assessment orders against which recovery is due. This measure will give an opportunity to taxpayers to file appeal while helping in recovery of arrears through pre-deposit.

4.23 The Hon'ble Member from Goa stated that considering the various technical difficulties faced by taxpayers during initial period of GST, one-time amnesty of filing of appeal by condonation of delay for order passed till 31st March, 2023 may be given till 31st March, 2024. The measure will not result in loss of revenue as correct demand will be assessed after the appeal is heard and decided by the appellate authority on merits.

4.24 The Secretary clarified that the amnesty given is one-time measure and moreover, the taxpayers have to pay an additional amount of 2.5% of the disputed amount as pre-deposit in cash. He further clarified that the time period of condonation of delay for filing appeal of orders passed upto 31st March, 2023 in respect of cases pertaining to 2017-18 may seem long but many States have passed the adjudication orders as late as July 2022 or December 2022 on account of Covid.

Decision: The Council agreed with the said recommendations of the Law Committee, as modified as per discussions in Officers' meeting, along with draft Notification.

Agenda Item 3(iv): Law amendment w.r.t. ISD as recommended by the GST Council in its 50th meeting.

4.25 The Pr. Commissioner, GST Policy Wing, stated that the GST Council in its 50th meeting recommended that ISD procedure as laid down in Section 20 of Central Goods and Services Tax Act, 2017 read with rule 39 of Central Goods and Services Tax Rules, 2017

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may be made mandatory prospectively for distribution of ITC in respect of input services procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs. Further, ITC on account of input services received from a third party, where such input services are liable to tax on reverse charge basis, should also be required to be distributed through ISD route. Further, the Council authorized the Law Committee to formulate the requisite law amendments. The Council also recommended that the manner of distribution of ISD credit as provided in section 20 of CGST Act 2017 does not require amendment at present.

4.26 Accordingly, the Law Committee recommended the following amendment in clause (61) of section 2 of the CGST Act, 2017 i.e. definition of ISD:

'(61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-sections (3) or (4) of Section 9, for or on behalf of a distinct person or distinct persons, as specified in section 25 and who is liable to distribute the input tax credit in respect of such invoices in terms of section 20.

4.27 Further, Law Committee recommended that section 20 of CGST Act 2017 may be substituted to explicitly mandate distribution of the common credit including with credit pertaining to common input services which are liable to tax on reverse charge basis, as under:

"20.(1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-sections (3) or (4) of Section 9, for or on behalf of a distinct person or distinct persons as specified in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 of this Act and shall distribute the input tax credit in respect of such invoices.

2. The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or (4) of Section 9 paid by a distinct person, registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.

3. The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

Pari-materia amendments would also be required in the **SGST Act**.

4.28 In view of the aforesaid amendment in Section 20 of CGST Act 2017, the Law Committee also recommended that the methodology for distribution of credit may be incorporated in rule 39 of the CGST Rules 2017 as follow:

39. Procedure for distribution of input tax credit by Input Service Distributor-

1.....

a. the input tax credit available for distribution in a month shall be distributed in the

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same month and the details thereof shall be furnished in **FORM GSTR-6** in accordance with the provisions of Chapter VIII of these rules;

- b. the amount of the credit distributed shall not exceed the amount of credit available for distribution;
- c. the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;
- d. the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;
- e. the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be *pro rata* on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period;
- f. the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) to one of the recipients "R1", whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula -

$$C_1 = (t_1 / T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t₁" is the turnover, as referred to in clause (d) and (e), of

person R₁ during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of clause (d) and (e);

- g. the Input Service Distributor shall, in accordance with the provisions of clause (d) and (e), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;
- h. the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d) and (e);
- i. the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

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- j. the input tax credit on account of central tax and State tax or Union territory tax shall-
- i. in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;
 - ii. in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient as referred to in clause (d) and (e);
- k. the Input Service Distributor shall issue an invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;
- l. the Input Service Distributor shall issue an Input Service Distributor credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;
- m. any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (j) and the amount attributable to any recipient shall be calculated in the manner provided in clause (f) and such credit shall be distributed in the month in which the debit note is included in the return in **FORM GSTR-6**;
- n. any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (f), and the amount so apportioned shall be-
- i. reduced from the amount to be distributed in the month in which the credit note is included in the return in **FORM GSTR-6**; or
 - ii. added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

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(1A) For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under sub-section (3) or (4) of Section 9, a registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note as per the provisions of sub-rule (1A) of rule 54 to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in sub-rule (1).

2. If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in clause (n) of sub-rule (1) shall apply, *mutatis mutandis*, for reduction of credit.

3. Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (l) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in **FORM GSTR-6** for the month in which such credit note and invoice was issued.

Explanation. – For the purpose of this rule–

i. the term “relevant period” shall be–

a. if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

b. if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

ii. the expression “recipient of credit” means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

iii. the term “turnover”, in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.”

4.29 Accordingly, the recommendations of the Law Committee for amendments in CGST Act and CGST Rules have been placed before Council for approval.

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

Agenda Item 3(v): Clarification regarding restoration of provisionally attached property.

4.30 The Pr. Commissioner, GST Policy Wing took up the next agenda regarding provisional attachment of the property of the taxpayers. He stated that Section 83(2) of

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CGST Act, 2017 states that the provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order i.e. provisional attachment order in the form of **FORM GST DRC-22**. However, as per Rule 159(2) of CGST Rules, 2017, provisional attachment of a property shall be removed **only** on the written instructions from the Commissioner to that effect. But, even after completion of 1 year, the property is not released as the banks and other agencies with which the property is provisionally attached unless they receive written instructions from the Tax Authorities. Therefore, it appeared that the CGST Rules, 2017 were not in alignment with the CGST Act, 2017. This misalignment between Rules and Act was observed by the Hon'ble Delhi Court in the case of M/s Balaji Enterprises vs. Pr. ADG, DGGI and therefore, the Hon'ble Court had ordered to adopt a procedure for defreezing the bank accounts.

4.31 He mentioned that the issue was deliberated by the Law Committee and the Law Committee recommended amendment in sub-rule (2) of rule 159 of CGST Rules and in FORM GST DRC-22, as below to align the provisions of CGST Rules with that of section 83 of CGST Act.:

Amendment in sub-rule (2) of Rule 159:

To insert the words "*or on expiry of a period of one year from the date of issuance of order in FORM GST DRC-22, whichever is earlier*," after the words "to that effect", to clearly provide that order issued under FORM GST DRC-22 shall cease to have effect after expiry of period of one year from the date of issuance.

Amendment in FORM GST DRC-22:

To insert the words "*This order shall cease to have effect, on the date of issuance of order in FORM GST DRC-23 by the Commissioner, or on the expiry of a period of one year from the date of issuance of this order, whichever is earlier.*"

4.32 He mentioned that after these amendments, order of provisional attachment would be valid for maximum period of one year and such order shall cease to have effect after expiry of one year from the date of issuance. He also added that these recommendations of Law Committee were discussed and agreed to in the officers' meeting. However, it was also recommended in the officers' meeting that officers may be issued alerts in respect of all such provisionally attached orders where they are nearing the completion of one year so that if any action needs to be taken by the concerned officer then the same could be done well before the lapse of the time limit. GSTN was requested to provide the said functionality on the system so that officers could be alerted about the time limit of expiry of one year of provisional attachment order.

Decision: The Council agreed with the recommendations of the Law Committee, including the recommendations of the officers in the officers' meeting, along with proposed amendment in sub-rule (2) of Rule 159 of CGST Rules, 2017 and Form GST DRC-22.

Agenda Item 3(vi): Clarification on various issues related to Place of Supply.

4.33 The Pr. Commissioner, GST Policy Wing informed that the next agenda is regarding issuance of a clarificatory circular on 'Place of Supply' in respect of three kinds of supply of

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services as discussed below.

A. Clarification regarding place of supply of services of transportation of goods by mail or courier when either supplier or recipient of service is located outside India

4.34 Law Committee recommended that a Circular may be issued to clarify that in respect of supply of services of for transportation of goods, including by way of mail or courier, in all cases where location of supplier of services or location of recipient of services is outside India, the place of supply is to be determined as per sub-section (2) of section 13 of the IGST Act, i.e. in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services. This shall help in aligning the treatment for supply of services of transportation of goods, other than by way of mail and courier, with that of supply of services of transportation of goods by way of mail or courier services, in cases where supplier or recipient is located outside India and will remove any ambiguities that may arise in interpretation or otherwise.

B. Clarification regarding place of supply for services in respect of advertising sector

4.35 The Pr. Commissioner, GST Policy Wing further explained the two scenarios differentiating the supply of services of advertising through hoarding:

(i) There may be a case wherein there is supply (sale) of space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. As per section 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.

(ii) There may be cases where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards and display of advertisement on the said location lies with the vendor and during this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed whereas the advertising company is not occupying the space or the structure. As there is no supply (sale) of space on the hoarding/ structure (immovable property) belonging to vendor to the client for display of their advertisement on the said display board/structure, it does not amount to sale of advertising space. Also, as there is no supply (sale) of rights to use the structure (immovable property) belonging to vendor to the other person to use for any purpose, it does not amount to supply by way of grant of rights to use immovable property. Therefore, such services provided by the Vendor to Advertiser are purely in the nature of advertisement services in respect of which Place of Supply should be determined in terms of Section 12(2) of IGST Act, 2017 according to which place of recipient (Advertiser) is the Place of Supply and nature of transaction as to whether inter-

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state or intra-state shall be decided accordingly.

4.36 The Hon'ble Member from Goa raised his concern that in services connected to 'Immovable Property' like the services of architect and engineer or stay in hotel, the place of supply in such cases is where the land is located and the GST goes to the state where the land property is situated irrespective of B2C or B2B supplies. Similarly, if any GST is collected on advertising through hoarding, then GST should go to the state where the hoarding is located. Hence for advertising through hoarding, place of location of hoarding should be considered as 'Place of Supply'.

4.37 The Pr. Commissioner GST Policy Wing mentioned that the concern of the Hon'ble Member from Goa has been addressed in the proposed circular, wherein it has been clarified that where the hoarding is taken on rent by the advertiser, the place of supply is the place of location of hoarding.

C. Place of supply in case of supply of the "co-location services"

4.38 Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services" (S. No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various components of 'Hosting and information technology (IT) infrastructure provisioning services' like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of colocation service.

4.39 However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property under provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act.

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

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

4.40 The Pr. Commissioner, GST Policy Wing informed that doubts were raised by trade and industry associations on the issue that export remittances realized in INR into Special Vostro accounts are being denied the benefit of exports by some of the tax authorities by taking a view that the remittances received by taxpayer in 'INR' in such Vostro accounts are not permitted by RBI for the purpose of consideration of supply of services as

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export of services as per provisions of clause (6) of section 2 of IGST Act, 2017. Therefore, the refunds of ITC are being denied to the exporters by such tax authorities claiming that the said exporter has not realized export proceeds in convertible foreign exchange and accordingly, the conditions for qualifying as export under clause (6) of section 2 of IGST Act, 2017 are not fulfilled.

4.41 Sub-clause (iv) of Section 2(6) of the IGST Act, 2017 requires that for a supply of service to qualify as export of service, the payment for such service should be received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India. On perusal of the provisions of RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 & Para 2.52 (d) of the Foreign Trade Policy (FTP) 2023, it appears that the conditions of the said sub-clause are fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 and reiterated further in Foreign Trade Policy, 2023. Law Committee has therefore recommended that it may be clarified through a Circular that the condition of sub-clause (iv) of Section 2(6) of the IGST Act, 2017 will be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account.

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

Agenda 3 (viii). Amendment in Central Goods and Services Tax Rules, 2017 and GST REG/PCT – FORM(s)

4.42 The Principal Commissioner, GST Policy Wing stated that the agenda pertains to few minor procedural changes to align GST REG/PCT-FORMS(s) and amendments in the CGST Rules, 2017, which have been recommended by the Law Committee. The amendments proposed are as follows:

A. Incorporation of 'One Person Company' in FORM GST REG 01 i.e. Application for Registration

4.43 The registration application process for certain business types requires a selection of the 'Constitution of Business' from a dropdown in Part B of FORM GST REG-01 i.e. Application for Registration. A recent change on the portal made it mandatory for applicants to provide details of at least two Partners/Promoters in certain specific categories of 'Constitution of Business'. However, there was no option for the category of 'One Person Company' applicants in the dropdown. To address this issue, an advisory was issued by GSTN advising 'One Person Company' applicants to select 'Others' in the dropdown and specify 'One Person Company' in a text field to complete the registration process.

4.44 Therefore, it was proposed to make available in Part B of FORM GST REG-01 as well as on portal in the 'Constitution of Business' tab, an option of 'One Person Company', so that one can apply as 'One Person Company'. With this option, the system will allow the applicant to fill in the details of the single member or owner and to submit the application successfully on system.

B. Application for Enrolment as Goods and Services Tax Practitioner- Amendment

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in Form GST PCT-01.

4.45 Rule 83(1) of the CGST Rules stipulates the conditions for enrolment as Goods and Services Tax practitioner by any person. It was recommended that necessary changes are required to be made on the portal as well as in Part-B of Form GST PCT-01 in line with the rules as below:

- a. Certificate of Practitioner is not required for CA/ICWA/CS as per the rules.
- b. Option related to Graduate or Post Graduate in Law and Higher Auditing is not available in notified form and the portal and needs to be inserted.
- c. Option related to any other examination notified by Government is also not available in notified form and the portal and needs to be inserted.
- d. Deleting the option of "Advocate" as it is not aligned with the existing rules.

C. Application for cancellation of TCS and TDS registration- Enhancement in Form GST REG-08 format for having options for cancellation of registration against the request made by the TDS and TCS registered persons.

4.46 Rule 12(3) of the CGST Rules was amended vide Notification No. 26/2022- CT dated 26.12.2022. This amendment allows tax officers to accept TDS/TCS taxpayers' requests for registration cancellation via email or manual submission and issue cancellation orders in FORM GST REG-08. Presently, the tax officers are issuing Order of cancellation of Registration as Tax Deductor at Source or Tax Collector at Source in FORM GST REG-08 for suo-moto cancellation of registration alone, with no separate format for self-cancellation applications.

4.47 A recommendation has been made to amend FORM GST REG-08 to specifically provide for cancellation of registration upon request by TCS/TDS taxpayers. Additionally, has been recommended to rephrase and align the cancellation reasons in FORM GST REG-08 with those in FORM GST REG-19, as per the CGST (5th Amendment) Rules, 2022, for improved clarity.

D. Amendment in rule 142 (3) of the CGST Rules with respect to FORM GST DRC-05

4.48 A recommendation has been made to remove the anomaly between rule 142(3) and FORM GST DRC-05, by substitution of the words "intimation" instead of "order" in rule 142(3) with respect to FORM GST DRC-05.

E. Changes in FORM GSTR-8 to include late fee

4.49 Section 47 of the CGST Act has been inter alia amended vide Finance Act, 2022 and the said amendment has been notified w.e.f. 01.10.2022 vide Notification No. 18/2022- Central Tax dated 28.09.2022. The amendment envisages that the late fee on delayed furnishing of return in FORM GSTR-8 under section 52 of the CGST Act, 2017 by e-commerce operators, should also be levied from the date of implementation of the aforesaid amendment. Since, existing FORM GSTR-8 does not contain late fee table, it has been recommended to make requisite changes in FORM GSTR-8 as per the agenda note.

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Decision: The Council agreed with the recommendations of the Law Committee in Agenda Item 3(viii) along with the amendments in said rule and said Forms.

Agenda Item 3(ix): Subject: Clarification on the scope of the refund on account of inverted duty structure in respect of supplies of certain construction services.

4.50 The Pr. Commissioner, GST Policy Wing presented the agenda and stated that the issue pertained to Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017, whereby refund of unutilized input tax credit was restricted in respect of supplies specified in item 5(b) of Schedule II of the Act.

4.51 Field formations have sought clarification regarding the applicability of Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017, concerning refund applications for services involving the construction of bridges and roads, among others.

4.52 Some field formations consider roads and bridges as "civil structures" falling under item 5(b) of Schedule II of the CGST Act, 2017, and assert that refund of accumulated credit on account of inverted duty structure is restricted by this notification for such services.

4.53 On the contrary, other field formations argue that the construction of roads and bridges is not covered by item 5(b) but rather they fall under works contract services as per Item 6(a) of Schedule II of the CGST Act, 2017 and therefore, there is no restriction on refund of accumulated credit for inverted duty structure in the case of such supply of services under Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017.

4.54 Accordingly, clarification is needed to resolve this interpretation discrepancy.

4.55 The Pr. Commissioner, GST Policy Wing informed that the issue had been thoroughly discussed by the Law Committee in its meeting, wherein two differing views emerged. The first perspective, which was held by the majority of members, posits that the construction of bridges and roads does not fall within the purview of item 5(b) of Schedule II of the CGST Act, 2017. It was argued that constructions of bridges and roads etc. are not intended for the purpose of sale, and item 5(b) of the said Schedule primarily pertains to real estate transactions where the supply includes the value of land and is meant for sale. According to this view, there is no restriction on refund of accumulated credit for inverted duty structure concerning such services under Notification No. 15/2017-Central Tax (Rate) dated 28.06.2017 and the same can be clarified through a circular.

4.56 Conversely, the opposing viewpoint, held by the State of Karnataka, contends that the construction of bridges and roads, among other similar structures, shall be categorized as "civil structures" falling under item 5(b) of Schedule II of the CGST Act, 2017. Accordingly, it is argued that the refund of accumulated credit should be denied for such services.

4.57 He further apprised the Council that during the Officer's meeting held on 06.10.2023, the majority of the States concurred with the first view. However, a few states, including Karnataka, Punjab, Haryana, Tamil Nadu, Uttar Pradesh, Kerala, and Jammu & Kashmir, held a divergent view favoring the second perspective. This situation has necessitated detailed discussions by the Council so as to reconcile these differing interpretations to achieve clarity and uniformity.

4.58 The Hon'ble Member from Maharashtra emphasized the need to distinguish the

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construction of roads and bridges from the real estate sector, as special concessions had been granted to the real estate sector, which is not the case for the construction of roads and bridges. Therefore, he stated that the refund of accumulated credit should not be restricted for construction of roads and bridges.

4.59 The Hon'ble Member from Karnataka highlighted that Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017, restricted the refund of unutilized input tax credit concerning supplies specified in item 5(b) of Schedule II of the Act. He stated that item 5(b) of Schedule II encompasses 'civil structures,' and the Act does not provide a specific definition for this term. However, he provided a common definition of 'civil structure,' explaining that it refers to engineered constructions that serve various purposes in society. These structures are designed to support infrastructure, transportation, utilities and public services.

Examples of civil structures include bridges, dams, highways, tunnels, airports, sewage treatment plants, and water supply systems. He argued that since all engineered constructions used for public purposes, like bridges and roads, fall under the category of civil structures, they should not be eligible for refund. Furthermore, he informed the Council that the State of Karnataka has been following this practice consistently, with most assesses complying, except for one who is litigating the matter in the High Court. The Member stressed that there have been no significant challenges, and the implementation has been smooth. He asserted that in their interpretation, item 5(b) of Schedule II of the Act encompasses more than just the real estate sector. They contended that the entry comprises independent components and is inclusive in nature. This inclusivity implies that this entry extends beyond real estate and is not limited to the sector. He stated that it may not be appropriate to dilute the Notification through a clarification and any changes should be made by amending the Notification rather than through a clarification. He cited the Hon'ble Supreme Court ruling, among various others, as held in Commissioner of Sales Tax, Uttar Pradesh, Lucknow v. Parson Tools & Plants Kanpur (1975), highlighting a para from the ruling that:

'the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be. A general principle of justice and equity. To do so, would be entrenching upon the preserves of Legislature'.

4.60 The Hon'ble Member from Karnataka stated that all notifications are placed in the Parliament and State Legislatures for approval, and any attempts to modify them through clarifications would constitute an encroachment into the legislature's domain. He also highlighted that issuing a clarification would have revenue implications for the State, though exact calculations had not been performed. He estimated a potential revenue outgo of approximately Rs 1000 crore for the State of Karnataka. He raised the issue whether the State would be compensated for this revenue loss resulting from the refund of accumulated credit as it pertains to protected revenue era.

4.61 The Hon'ble Chairperson acknowledged the Member's perspective and proposed it for the Council's consideration. She agreed with the Member's argument that there might not be a necessity to define the term "civil structure" used in item 5(b) of Schedule II, to provide clarity as to whether the term "civil structure" in item 5(b) of Schedule II includes bridges or not. However, she pointed out that the Law Committee's intent seemed to be more focused

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on including only real estate structures in item 5(b) of Schedule II and in the notification by using clarification route. She expressed her concern that if the Law Committee's intention was to exclusively include real estate structures only in item 5(b) or in the restriction in the said Notification, it should have been formulated the Law/ Notification more explicitly, rather than taking a circuitous route through the clarification.

4.62 The Secretary clarified that it appeared that the provisions were made to restrict accumulated credit for the real estate sector. However, the inclusion of the term "civilstructure" in item 5(b) of Schedule II apparently was to prevent any inadvertent omissions of other complexes, buildings or structures within real estate. The Secretary acknowledged that the definition of "civil structure" clearly encompassed bridges and roads, even though that may not be the original intent of Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017 to restrict refund of credit in respect of construction of bridges and roads. In line with the Hon'ble Member from Karnataka's suggestion, the Secretary proposed that the said notification could be prospectively amended to explicitly state what the entry includes. This would protect the revenue from previous years for the States and provide clarity for future situations. This approach could potentially merge both views and address the grey area in question, particularly since these projects typically involve government contracts where bidders need clear tax regulations.

4.63 The Hon'ble Member from Karnataka extended gratitude to the Chairperson and the Revenue Secretary for their positive response. He noted his reservations regarding the prospective approach but expressed willingness to withdraw them, recognizing that the Council has come two steps forward.

4.64 The Hon'ble Member from West Bengal raised concerns about those States who have already refunded the accumulated credit and have been compensated by the Centre. She suggested that the principle of 'Ejusdem generis', should be considered for better understanding the intent. She emphasized that taking this aspect into account might help avoid complications and ensure a smoother transition.

4.65 The Hon'ble Member from Kerala expressed agreement with the proposal but sought clarification regarding the contracts under consideration. Specifically, the Member inquired whether the term "prospective" referred to future contracts and agreements and not those already in existence.

4.66 In response, the Secretary clarified that the amendment should be in a manner that addresses both existing and future contracts. Regarding the query from the Hon'ble Member from West Bengal, the Secretary explained that there would be no clarification retroactively for past cases. States would retain the discretion to handle past cases as they see fit, based on their interpretation, as the amendment would be prospective.

4.67 The Hon'ble Member from Bihar requested to clarify the language used in the subject matter.

Decision: The Council agreed to amend the Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017 prospectively to clearly define the scope of restriction imposed by the said notification so as to provide that refund under inverted duty structure shall be restricted only in respect of supply of services of construction of a complex, building, structure, etc., which are intended for sale to a buyer, wholly or partly, and not to other construction/ work contract services.

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

5.1 The Secretary asked the Joint Secretary, TRU to present the agenda relating to the recommendations of the Fitment Committee.

5.2 Joint Secretary, TRU stated that the Fitment Committee agenda was summarized in six Annexures (I to VI). There were a total of 12 agenda items relating to goods out of which the Fitment Committee had recommended making changes in the GST Rate or issue of clarifications in case of 4 items (Annexure-I of the Agenda Volume-I), no change recommended in respect of 6 items (Annexure-II of the Agenda Volume-I) and deferred two issues for further examination (Annexure-III of the Agenda Volume-I). One agenda item was being placed before the Council for information. In the case of services, there were a total of 24 agenda items, of which the Fitment Committee had recommended making changes in the GST Rate or issue of clarifications in case of 10 items (Annexure-IV of the Agenda Volume-I), no change recommended in respect of 5 items (Annexure-V of the Agenda Volume-I) and deferred 9 items for further examination (Annexure-VI of the Agenda Volume-I).

5.3 Thereafter, JS, TRU presented the agendas pertaining to the recommendations of the Fitment Committee. **(Annexure-4)**

5.4 The first item for discussion was concerning "Food preparation of millet flour in powder form, containing at least 70% millets by weight" in respect of which the Fitment Committee had recommended for reduction of GST rate from 18% to 0% for food preparation of millet flour, in powder form, containing at least 70% millets by weight (CTH 1901), sold in other than pre-packaged and labelled form and 12% if sold in pre-packaged and labelled form. She stated that there was also a request for regularising the issue for the past period, but the Fitment Committee had not recommended the same as there was no ambiguity regarding tax rate on flour preparations for the past period. The same had been discussed in the officers' meeting and no objections were raised.

5.5 The Hon'ble Member from Delhi pointed out that currently branded Atta is being charged 5% GST and the rate of GST being proposed on millets is 12%, and if the intention is to promote the use of millets, then the rate of tax should be lesser or same as that of branded atta. Joint Secretary, TRU clarified that millet flour is already at Nil if sold in other than packaged form and at 5% if sold in packaged form. She clarified that the item under discussion is preparations of millet flour and that the proposal was for such value added products only.

5.6 The Hon'ble Member from Karnataka proposed 5% rate for value added products of millets as both the Centre and States were promoting the usage of millets in the International Year of Millets. He reasoned that this will give a fillip to millet consumption. This would lead to better uptake from farmers and better prices for them. He further stated that millets are highly nutritious and governments are spending money on fortifying food through various schemes. Millets on the other hand are naturally fortified food. To benefit the marginal farmers who grow millets, he suggested that processed and packaged foods made out of millets should also be brought to 5%. He stated that India has a lot to gain by promoting millets and might gain some export markets as well.

5.7 The Hon'ble Chairperson clarified that baked items, biscuits etc. referred to by the Hon'ble Member from Karnataka was not part of the agenda to be discussed. She further asked the Council to take a conscious call on the issue under discussion.

5.8 The Secretary clarified that atta whether of wheat or millets, if sold loose is chargeable to Nil GST. However, if sold in packaged form, atta even if it is a mix of millets and wheat, as long as it is flour, attracts 5% GST. However, if the flour has other ingredients

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added to it, like dry fruits etc. then it will attract higher rate of duty. Proposal is to charge 12% GST on such preparations containing at least 70% millets, packaged and labelled, and nil if sold loose, instead of present rate of 18% GST.

5.9 The Hon'ble Member from Karnataka proposed for bringing the content of millets to two-third and that the rest of one-third could be anything like sugar, dry fruits, nuts, pulses, Jaggery powder etc. That looking at the spirit of the Council, the processed foods based on millets, with higher share of millets could be considered at least in the future as the present agenda was limited to only atta.

5.10 The Hon'ble Member from West Bengal asked for clarification regarding the content in view of the proposal of the Hon'ble Member from Karnataka.

5.11 The Hon'ble Chairperson clarified that the proposal was for 70% and that Council might consider bringing that to two-thirds based on proposal of Hon'ble Member from Karnataka.

5.12 The Hon'ble Member from Meghalaya stated that the idea was to change the food habits by including millets in diets of people which would ultimately benefit the small and marginal farmers and supported the views expressed by the Hon'ble Member from Karnataka.

5.13 The Hon'ble Member from Tamil Nadu stated that millet flour when mixed with other flours should be charged to 5% GST, if mixed with any other value added product should be chargeable to 12%.

5.14 The Hon'ble Members from Maharashtra, Andhra Pradesh, Meghalaya, Punjab, West Bengal, Goa, Uttar Pradesh, Assam, Kerala and Odisha supported the proposal for 5% GST rate. However, the Hon'ble Member from Kerala opposed any reduction in GST rate on processed foods like cookies.

5.15 The Hon'ble Chairperson clarified that the proposal was only for raw product and as all have agreed for a rate of 5%, the proposal might be accepted for 5% for pre-packaged and labelled preparations of millet flour containing at least 70% millets and 0% if sold in other than pre-packaged and labelled form.

Decision: The Council approved the proposal for reduction in GST rate to 0% for food preparations of millet flour in powder form, containing at least 70% millets by weight, sold in other than pre-packaged and labelled form, and 5% if sold in pre-packaged and labelled form.

5.16 Joint Secretary, TRU then presented the next agenda item. She stated that the GST Council in its 50th meeting had recommended updating the list of banks/entities eligible for availing IGST exemption on import of gold, silver or platinum in accordance with Appendix 4B of HBP,FTP, 2023 after confirmation by DGFT & DGEP and the same was accordingly done. The current recommendation by the Fitment Committee was to update the list of banks eligible for availing IGST exemption as authorized by RBI as per the public notice issued by DGFT in August, 2023. She stated that the Fitment Committee has also recommended that the GST Council might consider giving approval to update such lists as and when amended by DGFT and thereafter place the same before the Council for information.

Decision: The Council approved the recommendations of the Fitment Committee with

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regard to updating the list 34A and 34B of Notification No. 50/2017-Cus as per revised appendix 4B issued vide DGFT Public Notice dated 18.08.2023 and to update such lists as and when amended by DGFT and placing before the Council for information thereafter.

5.17 Joint Secretary, TRU then presented the next agenda item pertaining to clarification on imitation *zari* thread or yarn made out of polyester film (metallised) or plastic film. She stated that the GST Council in its 50th meeting had recommended reduction of GST rate to 5% on all imitation *zari* thread or yarn known by any name in trade parlance. She stated that doubts had been raised as to whether imitation *zari* thread also covers metal coated plastic film converted to metallised yarn and twisted with nylon, cotton, polyester or any other yarn to make imitation *zari* thread. She stated that as per the HS Explanatory Notes, the same would be covered under heading 5605 with 5% GST. The Fitment Committee has therefore, recommended issuing a clarification to that effect and in view of the reservations expressed by the state of Gujarat, also recommended to clarify that no refund will be permitted on polyester film (metallised)/ plastic film on account of inversion.

Decision: The Council approved the issue of clarification as recommended by the Fitment Committee that imitation *zari* thread or yarn made from metallised polyester film/plastic film are covered under heading 5605 and levied to 5% GST and recommended that no refund will be permitted on polyester film (metallised)/ plastic film on account of inversion in duty structure.

5.18 Joint Secretary, TRU then presented the Agenda points as mentioned in Annexure-II of the agenda where the Fitment Committee had recommended no change. She stated that a request had been received to clarify that concrete mixers, self-loading concrete mixers and boom pumps i.e. concrete mixers when supplied independently or mounted on a chassis supplied by the customers, would not constitute a body for a motor vehicle and would not be classified under HSN 8707 at 28%. She stated that the Fitment Committee recommended that a specific clarification may not be required in view of the fact that the entries under HS Codes and explanatory notes are clear and there is no ambiguity.

Decision: The Council approved the recommendation of the Fitment Committee in this regard.

5.19 Joint Secretary, TRU then presented the next agenda item pertaining to extending the concessional rate of GST for spare parts of renewable energy devices irrespective of its end-use. She stated that currently concessional GST rate of 12% is provided for parts for manufacture of enlisted devices and not for replacements/ repairs. Fitment Committee had recommended to maintain status quo. When the issue came up for discussion in the officers' meeting, Punjab had requested for a relook at all end use based exemptions in the notification and it was decided that the Tax Research Unit would examine in totality all end use based exemptions in GST.

Decision: The Council approved the recommendation of Fitment Committee on maintaining status quo with respect to GST on spare parts for enlisted renewable energy devices and directed the TRU to examine all end use based exemptions.

5.20 Joint Secretary, TRU then presented the next agenda item pertaining to reduction

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in GST rate on lithium ion batteries from 18% to 5%. She stated that when Fitment Committee examined the issue, it was found that lithium ion batteries have multiple uses and hence recommended to maintain status quo.

Decision: The Council approved the recommendation of the Fitment Committee for maintaining status quo on the GST rate for supply of lithium ion batteries.

5.21 Joint Secretary, TRU then presented the next agenda item pertaining to request for clarification on scope of sugar boiled confectionary. She stated that sugar confectionary currently attracts 18% GST while sugar boiled confectionary attracts 12% GST. Fitment Committee recommended that no clarification is required in this regard as there exists FSSAI standards for the products.

Decision: The Council approved the recommendation of the Fitment Committee that no clarification is required to be issued regarding scope of sugar boiled confectionary.

5.22 Joint Secretary, TRU then presented the next agenda item pertaining to requests from Beverages associations and Ministry of Defence to exempt GST compensation cess on supply of aerated beverages by Unit Run Canteens (URCs) or alternatively, the applicable cess may be collected at the Canteen Stores Department (CSD) depot level for supplies made by URCs. She stated that currently all supplies by URCs to authorised customers is fully exempt from GST, however, a conscious decision was taken in the 15th meeting of the GST Council not to exempt levy of Compensation Cess. She stated that currently Compensation Cess is being levied on two wheelers, four wheelers and aerated beverages. Two wheelers and four wheelers are being supplied through CSD depots only and cess is being duly collected and paid to the government. Aerated beverages were being supplied by URCs and because of the difficulties associated with their registration as they are spread out and located in difficult terrain, they are unable to pay the compensation cess and therefore have stopped procurement and sales of aerated beverages. Fitment Committee recommended no change in rate of compensation cess on aerated beverages supplied by Unit Run Canteens and regarding the option of collecting applicable cess at Depot level for supplies by URCs, it recommended that the matter may be referred to Law Committee for examination.

Decision: The Council approved the recommendations of the Fitment Committee

5.23 Joint Secretary, TRU stated that the next agenda item arose out of a Parliamentary assurance. The issue pertains to requests from some states for levy of uniform additional compensation cess on cigarettes and tobacco products. She stated that the issue was examined by the Fitment Committee and Fitment Committee recommended no change in compensation cess rates on cigarettes, bidis, smokeless tobacco products in view of the recent changes in the levy of compensation cess on such commodities from ad valorem rate to RSP linked rate and increase in National Calamity Contingent Duty (NCCD) on specified cigarettes.

5.24 The Hon'ble Member from Karnataka stated that the issue pertained to increase in taxation on tobacco products, either GST or cess, and that they preferred the tax route rather than increasing cess. He stated that the incidence of tax on tobacco products in India was about 54% which was way below the global standard of 75%. He further stated that considering the ill health effects of tobacco products, there should be higher tax on those products and therefore, GST rate on tobacco products should be increased and slowly brought on par with global standards which was 75%. He stated that there was a worldwide

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consensus on limiting the usage of tobacco and that it was the people in middle and lower income level which suffered the most due to the detrimental health effects of the use of tobacco. He reminded the august house that India is a signatory to the Framework Convention on Tobacco Control of WHO wherein parties to the Convention have agreed that price and tax policies are effective measures for controlling consumption of tobacco. He further stated that tobacco companies are now focussing on developing and under developed countries as the developing countries have been very aggressive with their tax policies. He urged the Council to consider increasing the tax on tobacco products to global standards. He stated that the same applied to aerated beverages also as they cause huge health risk and that many countries had moved aggressively in taxing aerated beverages and that the Council should look towards increasing the tax on tobacco products

5.25 The representative from Goa stated that while he agreed with the arguments of Hon'ble Member from Karnataka, and it is the poor who suffer from the ill effects of tobacco use, increase in taxation will promote the grey market where such products are sold without paying any taxes whatsoever. Therefore, there is a need to balance the taxation in such a way that it did not lead to illegal market in a big way. He stated more data was required to arrive at an appropriate well thought out decision.

5.26 The Hon'ble Member from Maharashtra stated that he supported the view of Goa as it has been their experience in Maharashtra that increase in rates leads to increased black marketing. He stated that while the cause was good, caution needs to be exercised in increasing the GST rate

5.27 The Secretary informed the Council that the Parliamentary Assurance Committee needed to be informed in this regard and whenever more data/information was available, the issue might be revisited again.

Decision: The Council agreed to maintain status quo on levy of compensation cess on cigarettes, bidis and smokeless tobacco products.

5.28 Joint Secretary, TRU informed the Council that 2 issues as mentioned in Annexure-3 were deferred for further examination.

5.29 The Hon'ble Member from Maharashtra stated that khari is not puff and is just a toasted product. It is consumed in few states like Goa, Maharashtra, Gujarat and requested to take the issue on priority. He stated that all requisite certificates from Institutes had been obtained.

5.30 The Secretary stated that in the officers' meeting he had already mentioned that both the agendas, pertaining to khari and steel scrap, may be expedited and the Council may like to direct the Fitment Committee to bring recommendations on these two issues in the next meeting.

Decision: The Council directed the Fitment Committee to examine the issues pertaining to khari and steel scrap and bring the same before the Council in its next meeting along with its recommendations.

5.31 Joint Secretary, TRU informed the Council that the Hon'ble Madras High Court had directed that the authority concerned shall ensure that necessary orders exempting GST and motor vehicle's tax on Motor Vehicle purchased by the petitioner shall be passed within four weeks from date of receipt of undertaking letter from the petitioner. She stated that this Writ Petition had been filed by a visually impaired person who sought the same

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concessional rate of GST(18%) which is currently applicable to orthopedically disabled persons. She said that an appeal has been filed against the decision along with stay petition and the issue is being brought for information of the Council.

5.32 The Hon'ble Member from Goa stated that the GST Concession for purchase of motor vehicles available to only Orthopedically disabled persons should also be made available to all Divyangjans. In future, vehicles may also be modified for use by other Divyangjans beyond those orthopedically challenged. Since the concessional rate requires a certificate from Ministry of Heavy Vehicles, there is no scope for misuse of this concession. He reiterated that the facility should be extended to all Divyangjans.

5.33 The Secretary clarified that if any concession had to be given to any person and not to goods, then the same had to be through subsidy or reimbursement route and that the Council had decided the same in its earlier in 47th meeting. He stated that this issue has been brought to notice of the Council that an appeal has been filed in this case before the Hon'ble Court.

Agenda Item 4 (Part-II): (i) Agenda on Extra-Neutral Alcohol (ENA)

5.34 Joint Secretary, TRU then presented the agenda no 4 (Part-II) related to taxation of Extra Neutral Alcohol (ENA). She informed the Council that that issued was first discussed in 20th Meeting of the GST Council and in subsequent meetings but decision could not be arrived except for the fact that 18% GST would be levied on ENA for Industrial Use.

Thereafter, there are varying practices across States wherein some States levied VAT and some levied GST and where taxpayers had paid GST they had been issued notices demanding VAT on the same; where assesseees had paid VAT, they have been issued notices demanding GST on ENA supplied. This had led to multiple litigations. She stated that over 40 Writ Petitions had been filed in the state of Madhya Pradesh asking the Court to direct the GST Council to settle the issue because of the difficulties faced by the ENA manufacturers. The proposal was discussed in the officers' meeting and is now presented based on the inputs given by States. She stated that the proposal is to place before the Hon'ble Supreme Court where an appeal by the Uttar Pradesh government is pending that the GST Council has no intention to tax ENA for use in the manufacture of Alcoholic Liquors for Human Consumption and that Law Committee may be asked to carry out suitable amendments for keeping ENA for manufacture of alcoholic liquors for human consumption out of the ambit of the GST; and to notify rate of 18% for new tariff line created for ENA for Industrial use. She stated there is also a proposal to reduce the GST rate on Molasses from 28% to 5%.

5.35 The Hon'ble Member from Goa stated that the present proposal to exempt ENA is good as it will reduce the input cost for the liquor industry. Reduction of tax rate on molasses from 28% to 5% would also reduce the tax burden on the liquor industry. Therefore, states could increase the excise duty on liquor and also VAT on liquor finished product and this would help them to increase their revenue. He stated that it is clear that ENA both for industrial use and for use in manufacture of alcoholic liquors for human consumption is under GST.

5.36 The Hon'ble Member from Tamil Nadu opposed the proposal as the same would go

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against the very principle of bringing all goods under GST and would not be aligned with the constitutional provisions and various judgements already pronounced in this regard. He mentioned that the Hon'ble Allahabad High Court had held that imposing VAT on ENA is ultra-vires. Further, administration of two rates on ENA at the hands of supplier, based on end use, would pose implementation problems. It would be difficult to make out whether the ENA is meant for industrial use or for manufacture of alcoholic liquors for human consumption. He also mentioned that in the 47th meeting of the GST Council, the Fitment Committee had not recommended the request for exemption of molasses on the grounds that end use based exemptions are difficult to monitor and need to be discouraged and the Council had accepted the recommendation of the Fitment Committee. Thirdly, net importing states like Tamil Nadu stand to lose if supply of ENA for manufacture of alcoholic liquor is kept outside the ambit of GST. Their study estimates the loss to be of Rs. 35 crore. He requested that ENA may be brought within the ambit of GST. He stated that reduction in rate of GST on molasses from 28% to 5% will have a huge impact on the revenues of the state to the tune of Rs. 92 crore per annum. Therefore, Tamil Nadu was not agreeable to the proposal.

5.37 The Secretary clarified that there was no specific entry for ENA and that currently it is taxed under the residual category. In the pre GST era, there was no excise duty on ENA meant for manufacture of alcohol. He further stated that it is a pro-State measure and the Centre was in fact conceding the revenue arising out of GST on ENA to the states, which would then enable the States to impose higher taxes in the form of excise duty and VAT on alcohol, the end product, as already mentioned by the Hon'ble Member from Goa. The Council is not clarifying whether VAT can be imposed on ENA meant for use in production of alcohol for human consumption as the Council is not empowered to decide the same. The present proposal is to not impose GST on ENA meant for use in manufacture of alcoholic liquor for human consumption which would enable the States to impose higher tax on end product. Further, Molasses is not an end product but an input for manufacture of alcoholic liquor for human consumption. The reduction of rates on molasses is also a pro-farmer measure. This step will increase liquidity with mills and enable faster clearance of cane dues to sugarcane farmers. This will also lead to reduction in cost for manufacture of cattle feed as molasses is also an ingredient in its manufacture. He stated that only alcohol for human consumption was out of the purview of GST and ENA is not alcohol meant for human consumption. Therefore, although the Council has the power to levy GST on ENA as per the order of Allahabad High Court which is buttressed by the opinion of the learned AG, the same would be kept outside the purview of GST by amending the law. He stated that the Constitution gives the Council power to levy GST on ENA, but it is for the Council to decide whether or not they want to tax it.

5.38 The Hon'ble Member from Karnataka stated that the issue was discussed extensively in the 20th meeting of the GST Council. He welcomed the gesture to keep ENA meant for production of alcoholic liquor for human consumption out of the purview of GST which was the demand of most of the States earlier. It is a pro-State proposal and a step in the right direction.

5.39 The Secretary clarified that while the Council may decide to not levy GST on ENA, it does not mean that they do not have the right so to do and the judgements of the Courts also are in line with the same. The learned AG had also opined that both the Centre and the States have a right to impose GST on ENA. The current proposal is to cede that right of the Centre when ENA is supplied for manufacture of alcoholic liquor for human

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consumption. The intent of the Council would be placed before the Hon'ble Supreme Court and other High Courts where the issue is pending. The amendments to law etc. will be examined by the Law Committee.

5.40 The representative of Madhya Pradesh stated that the views of the Hon'ble Member from Madhya Pradesh may be taken on record. He stated that only alcoholic liquor meant for human consumption had been kept out of purview of GST and the content of alcohol in ENA, which is 95%, makes it clear that it is not alcohol meant for human consumption. He further stated that the Hon'ble High Court of Allahabad had held in the case of M/s Jain Distillery that after the 101st Amendment to the Constitution, the states had no legislative competence to levy tax on ENA. He opposed the proposal to tax ENA based on end use and stated that earlier the Council had discouraged the same. He stated that there might be a possibility of tax evasion in case of differential tax structure on ENA.

5.41 The Hon'ble Member from Punjab, while welcoming the proposal to not tax ENA meant for use in production of alcohol for human consumption under GST, observed that it might lead to tax evasion as it would be difficult to differentiate ENA which would be put to multiple uses.

5.42 The Hon'ble Members from Goa, Meghalaya, Himachal Pradesh, Chhattisgarh, Maharashtra, Uttar Pradesh and West Bengal supported the proposal. The Hon'ble Member from Himachal Pradesh also recommended exempting ENA from GST irrespective of end use.

Decision: The Council approved the proposal to keep ENA for use in manufacture of alcoholic liquor for human consumption out of the ambit of GST, to place the intent of the Council before the Hon'ble Supreme Court and other Courts, to notify rate of 18% for new tariff line to be created on ENA for industrial use and to reduce the GST rate on molasses from 28% to 5%.

5.43 Joint Secretary, TRU then presented the agenda pertaining to Services as mentioned at Annexure-IV in the agenda Volume-1. She presented the recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services.

5.44 Joint Secretary, TRU informed the Council that a request had been received to notify a mechanism by which ITC flow would not be restricted in case of the said supply through electronic commerce operator (ECO) from two Companies supplying passenger transport services by AC buses. She informed that the liability to pay tax in respect of passenger transportation services has been shifted from bus operator to the ecommerce operator (ECO) w.e.f 01.01.2022. She further informed that these companies had represented that they supply services through ECO as well as directly through own platform or offline mode. However, due to notification of their service under section 9(5), they were not able to fully utilize their ITC. Accumulation of ITC was more pronounced in case of electric buses which were two or three times costlier than ordinary buses. She explained that the said services were notified under section 9(5) as a trade facilitation measure as most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliance requirements. She stated that to arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, Fitment Committee had recommended that bus operators organized as companies supplying passenger transport services could be

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excluded from the purview of Section 9(5) of the CGST Act, 2017. She also stated that during the examination of the issue the Fitment Committee had found that GST rate of 5% for the said services with credit of input services in the same line of business was leading to inversion of tax and credit accumulation. She informed the Council that one of the reasons for the same was that input services in the same line of business attracted GST at rates higher than 5%. She stated that the Fitment committee had further recommended that where GST on input service in the same line of business is payable/paid by the supplier of input service at a rate higher than 5%, the supplier of passenger transport service by any motor vehicle would be entitled to ITC only to the extent of such amount of GST as would have been payable on the input service in the same line of business at the rate of 5%.

5.45 Further she stated that, presently the same line of business has been described in the entry as "service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle". Fitment Committee recommended that it may be clarified through a circular that input services in same line of business include transport of passengers (SAC 9965) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (9973), which attracts GST at the same rate as sale of motor vehicles, that is, 28% plus compensation cess.

Decision: The Council approved the recommendations of the Fitment Committee that,-

- a. **Bus operators organised as companies may be excluded from the purview of section 9(5) of the CGST Act, 2017;**
- b. **Where GST on input service in the same line of business is payable/paid by the supplier of input service at a rate higher than 5%, the supplier of passenger transport service by any motor vehicle would be entitled to ITC only to the extent of such amount of GST as would have been payable on the input service in the same line of business at the rate of 5%;**
- c. **a circular may be issued to clarify the scope of 'input services in the same line of business' for entities supplying passenger transport service by vehicles as above.**

5.46 Joint Secretary, TRU presented the next item that pertained to clarification as to whether reimbursement of electricity charges received by the Real estate companies, malls, airport operators etc. from their lessees/occupants is exempt from GST. She stated that the Fitment Committee had recommended that whenever electricity was supplied bundled with other supplies such as renting of immovable property services, maintenance services, etc. it would be taxed as a composite supply even in cases where electricity bill was shown separately. However where electricity was being supplied by the RWAs or real estate owner as a pure agent, the same would not form a part of the value of supply. She further stated that the issue was discussed in the Officers' meeting and there was a request that resident welfare associations should be deemed to be pure agents for the said purpose where they charge for electricity on actual basis as they may not be able to comply with all the procedures, condition required to be a pure agent and this was agreed to by all members.

5.47 The Hon'ble Member from Maharashtra suggested that if any other charges were being collected with electricity, only those charges should be taxed and not the electricity charges as it would amount to double taxation.

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5.48 The Secretary clarified in respect to agenda regarding reimbursement of electricity charges that the exemption would be available as long as actual charges were being reimbursed to Resident Welfare Association or any other body even in the absence of meters.

Decision: The Council approved the issue of clarification as recommended by the Fitment Committee and that where electricity was being supplied by the RWAs or real estate owner as a pure agent, the same would not form a part of the value of supply. The Council also approved the recommendation that a resident welfare association or real estate owner or developer etc. should be deemed to be pure agent for the said purpose, as long as it charges for electricity on actual basis the amount payable to electricity distribution company or electricity supplier.

5.49 The next item presented by Joint Secretary, TRU was regarding exemption of services provided by District Mineral Foundation (DMF) from GST. She stated that the Fitment Committee had recommended to clarify that DMF is a governmental authority and thus eligible for all exemptions available to governmental authorities. She further informed that the issue was discussed in the Officer's meeting and no objections were raised.

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

5.50 Joint Secretary, TRU then presented the next item which was to clarify whether the job work of converting "Barley" into "Malted Barley" amounts to job work services in relation to food and food products which attracts GST at 5% or job work services in relation to manufacture of alcoholic liquor for human consumption which attracts GST at 18%. She stated that Fitment Committee had recommended to clarify that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff.

Decision: The Council agreed with the said recommendation of the Fitment Committee to clarify that job work services in relation to manufacture of malt are covered by entry at S.No.26(i)(f) irrespective of end use of the malt.

5.51 Joint Secretary, TRU informed the Council that the next agenda item was to specify a positive list of services under Sr. No. 3 & 3A of notification No. 12/2017-Central Tax (Rate). She stated that this issue was discussed in earlier Council meetings and Fitment was asked to examine whether there was a need to prune the list of exempt supplies of pure services or composite supplies by way of activity in relation to functions listed in Articles 243G and 243W of the Constitution of India when supplied to Central Government, State Government or Local authority. However, during previous discussions on the same, states had opined that the list should continue as it exists. She stated that the Fitment Committee had recommended to maintain the existing list of services in 3 and 3A of Notification No. 12/2017 CTR dated 28.06.2017.

5.52 She further stated that prior to 01.01.2022, the exemption also covered services supplied to Governmental authority and Governmental entities also. The Fitment Committee had also recommended to create a new entry to exempt the following five services supplied to Governmental Authority:

Water Supply
Public health
Sanitation Conservancy
Solid waste management

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Slum improvement and upgradation

5.53 The Hon'ble Member from Delhi appreciated the recommendation of the Fitment Committee to not prune the list and requested that in addition to the five services recommended by the Fitment Committee, an entry may be made to include services relating to education provided to governmental authorities.

5.54 The Hon'ble Member from Andhra Pradesh stated that the recommendation limited the exemption to the said five services by governmental authorities. He stated that the Urban Development Authorities also perform the functions of local bodies. He listed out some functions performed by Urban Development Authorities viz., provision of urban amenities and facilities such as parks, gardens, playgrounds, street lighting, parking lots, bus stops etc. that urban development authorities have similar responsibilities as local authorities. He said that the proposal would see the urban bodies being taxed on the same services that the local bodies were being exempted from. He further stated that the tax rate of 18% imposed a huge burden on these bodies which were already reeling under severe dearth of revenues. He requested that the exemptions under the proposal may be broadened to include all governmental authorities other than those providing purely commercial activities.

5.55 The Secretary clarified that the issue of whether an Urban Development Authority is a governmental authority or a local authority is a separate agenda which had been deferred by the Fitment Committee and the Council may decide the same after the Fitment Committee has examined and given its recommendations on the issue. He stated that there was a difference in the way entities such as government, governmental authorities, public authorities, local bodies, etc. and other entities were taxed and similarly there is a disparity in taxation of goods and services being supplied to such bodies. He stated that this was inherited from the pre-GST era and would have to be looked into.

5.56 The Hon'ble Member from Andhra Pradesh stated that HR cost was high for local bodies and they were mainly recruiting through outsourcing. The purpose of outsourcing was to reduce the burden on the exchequer as compared to regular recruitment. He stated that the same would be defeated if the said exemption is not brought about.

5.57 The Hon'ble Member from Karnataka stated that he welcomed the proposal however he agreed with the Hon'ble Member from Andhra Pradesh. He said that the issue of exempting Urban development authorities may be examined by the Fitment committee and discussed in the Council.

5.58 The Secretary agreed to the same and reiterated that the said matter was already before the Fitment Committee and urged the Fitment Committee to expedite examining the same.

5.59 The Hon'ble Member from Andhra Pradesh stated that there are four categories namely Government, Governmental authorities, Local government and Government entities. Pure definition of local government includes only panchayats, Zilla parishads, Municipalities, etc. The Urban Development authorities come under Government authorities therefore this had to be read with separately.

5.60 The Secretary stated that there was a request from Delhi Development Authority to clarify whether they were a governmental authority and once the same is decided the same will be clarified for other bodies of similar nature. He informed that there was an agenda for deciding on the same which had been deferred by the Fitment Committee and once the same was decided the present issues being raised by the Hon'ble Members would be resolved.

5.61 The Hon'ble Member from Andhra Pradesh quoted 2(69) of the CGST Act 2017, wherein Local authority is defined and stated that the same did not include Urban



development authority. He requested that a comprehensive view may be taken on this issue.

5.62 The Hon'ble Chairperson remarked that as pointed out by the Hon'ble Member from Andhra Pradesh the Urban Development Authorities were separate from Local authorities as per the GST Law as well as by common understanding and hence the issue of Urban Development authorities should be examined separately. She urged the Fitment Committee to examine the issue of all similar bodies as early as possible.

5.63 The Hon'ble Member from Delhi stated that there were two issues to be considered; what constituted a governmental authority and whether governmental authority should be treated at par with government and local authority. She further stated that while government and local authority is exempted, in case of governmental authorities a list of exempted services is being specified. She requested that the Fitment Committee may also examine whether governmental authorities can be treated at par with Government and Local authority.

5.64 The Hon'ble Member from Maharashtra stated that the issue in the agenda was pending for long and hence a decision may be taken recommending the same. Any additions could be made later.

5.65 The Hon'ble Chairperson clarified that the agenda would be cleared as all the members were in agreement with the same and the concerns raised by the Hon'ble Members would be examined by the Fitment Committee. She also stated that the Council had taken a position on the matter discussed which was aligned with the legal position in the pre-GST era and expressed hope that the Council would take that into cognizance.

5.66 The Hon'ble Member from Meghalaya requested that since the Fitment Committee was looking into the issue of local authorities, the matter of District Councils which are prevalent in North-east -, may be looked into as well.

5.67 The Hon'ble Chairperson agreed that the same should be examined by the Fitment Committee.

Decision: The Council approved the recommendations of the Fitment Committee to retain the entries at S. Nos. 3 and 3A of notification No.12/2017-CTR and for creation of a new entry to exempt five specified services supplied to Governmental authority.

5.68 Joint Secretary, TRU then presented the next agenda item which was a request to bring supplies made by Indian Railways (IR) under forward charge mechanism from the existing reverse charge mechanism. She informed the Council that presently only the transportation of goods and services provided by Railways is under forward charge and other services such as grant of catering licenses, renting of immovable properties and sale of used and old goods, etc are under reverse charge mechanism. She further informed that this was leading to blockage of ITC and has resulted in Railways accumulating substantial credit. She stated that the Fitment Committee had recommended that all goods and services supplied by Indian Railways may be brought under forward charge. She further stated that certain exemptions on services supplied by government (which included IR) to individuals, unregistered business entities having turnover below the registration threshold, services valued at Rs. 5000 or less (Rs. 5000 in a year in case of continuous supply of service) have been given so as to ensure that individuals or small unregistered businesses are not required to take registration to pay GST on them under RCM. Similarly, services by Central Government, State Government, Union Territory or local authority to another Central Government, State Government, Union Territory or local authority have been exempted as services supplied by Central Government, State Government, Union Territory or local authority have been exempted as services supplied by Central Government, State Government, Union Territory or local authority are generally under Reverse Charge Mechanism (RCM). She stated

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that if the Council were to decide to tax all goods and services supplied by Indian Railways under forward charge, Indian Railways may be excluded from the above exemptions; otherwise, it would defeat the purpose of bringing all supplies of Indian Railways under forward charge mechanism. Accordingly, it was recommended by the Fitment Committee that

- i. All goods and services supplied by Indian Railways may be brought under forward charge.*
- ii. Indian Railways may be excluded from the aforesaid exemptions.*

5.69 She informed that the proposal was discussed in the Officers' meeting and no objections were raised.

Decision: The Council approved the recommendation of the Fitment Committee to bring the supplies of all goods and services made by Indian Railways under forward charge mechanism from the existing reverse charge mechanism and Indian Railways may be excluded from the exemptions available for services supplied by Central Government as recommended by the Fitment Committee.

5.70 Joint Secretary, TRU informed that the next item was a request received from CAMPCO seeking clarification on entry 54(g) of 12/2017-CT(R) dated 28.06.2017 with regard to the scope of exemption for commission agent in facilitating the sale of agricultural produce. She informed that the Fitment Committee had recommended that since this issue pertained to only a single party and was not a general issue impacting many states, CAMPCO may be advised to approach the Authority for Advance Ruling. She stated that this was discussed in the officers' meeting and concurred with by all the officers.

5.71 Joint Secretary, TRU informed that the next item was issuance of clarification on the applicability of GST on Horticulture Contracts of CPWD. She stated that the Fitment Committee had recommended to clarify that supply of pure services and composite supply of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) to CPWD are exempt from GST under Sr. No. 3 and 3A as they exist today. She further stated that the said matter was discussed in the Officers' meeting and there were no objections.

Decision: The Council approved the recommendation of the Fitment Committee regarding the clarification on applicability of GST on Horticultural Contracts supplied to CPWD.

5.72 Joint Secretary, TRU informed that the next agenda item was proposed amendments to notification No. 11/2017-CT(R) dated 28.6.2017 consequent to amendment of CGST Act, 2017. She stated that these were of a technical nature as there were certain entries under services which refer to actionable claims. The GST Council has decided to tax specified actionable claims as goods. She said that the recommendation was to revise those entries so that they were in line with the Council's decision to tax the specified actionable claims as goods and also to make consequential changes to entries in the scheme of classification. She stated that the proposal was to amend Sl. No. 34 (iv), (v) of services rate notification No. 11/2017-CT(R) dated 28.06.2017 and to carry out consequential amendments in the classification of services and explanatory notes.

Decision: The Council approved the recommendation of the Fitment Committee to amend services rate notification No. 11/2017-CT(R) dated 28.06.2017.

5.73 The Joint Secretary, TRU informed that the next agenda pertained to declaring Delhi Development Authority as a Local Authority for the purposes of GST. She stated that the



matter was already discussed during the discussion specifying a positive list of services under Sr No. 3 & 3A of notification No. 12/2017- Central Tax (Rate). She informed that the Fitment Committee had recommended for deferring the issue as it required detailed examination.

Decision: The Council approved the Fitment Committee's recommendation. It also directed that the Fitment Committee examine all similarly placed bodies/authorities expeditiously.

5.74 The Joint Secretary, TRU then presented the next agenda pertaining to clarification of whether service by way of hostel accommodation, service apartments /hotels booked for longer period is a service of renting of residential dwelling for use as residence and exempted as per entry no. 12 of the notification No. 12/2017-CT (Rate) dated 28/06/2017. She stated that the accommodation services under heading 9963 by a hotel, inn, guest house, club or campsite by whatever name called, having declared tariff of a unit below one thousand rupees per day or equivalent were exempt till 17.07.2022 vide entry no. 14 of the notification No. 12/2017-CT(R) dated 28.06.2017. Hostels and hotels were claiming the said exemption. However, vide the amendment notification No. 04/2022- CT(Rate) dated 13.07.2022, the exemption to hotel accommodation having per day charges below Rs.1000/- has been withdrawn w.e.f. 18/07/2022 and the said supply is now made taxable at 12% by the notification No. 03/2022-CT (Rate) dated 13.07.2022. Currently, hotel accommodation having value of supply less than or equal to Rs. 7500 per unit per day attracts 12% whereas those having value of supply more than Rs. 7500 per unit per day attracts 18%. She further stated that there was a request for GST exemption on hostels for poor and middle- class students run by charitable trusts. She informed that Circular No. 354/17/2018-TRU dated 12.02.2018 at its point no. 1 has considered the hostel accommodation at par with the hotel accommodation. She informed the Council that post 17/07/2022, hostels were not eligible to claim exemption under entry no. 14 of the notification No. 12/2017-CT(R) dated 28.06.2017. She stated that hostels were now claiming exemption applicable to renting of residential dwelling for use as residence (Sl. No. 12 of notification No. 12/2017 - CTR). She further informed the Council that there had been some litigation on the issue and the decision by Hon'ble Karnataka High Court that residential dwelling includes hostels has been appealed against and the matter was pending before the Hon'ble Supreme Court of India. She stated that the recommendation of the Fitment Committee was to clarify that the exemption to renting of residential dwelling for use as residence did not cover hostels or paying guest accommodations and the like.

5.75 The Hon'ble Member from Maharashtra suggested that the matter may be deferred as hostels were mainly meant for students many of whom were poor and coming from rural areas to urban areas for educational purposes. He stated that concessions should be considered in such cases.

5.76 The Hon'ble Members from Goa, Chhattisgarh, Meghalaya and West Bengal supported the suggestion by the Hon'ble Member from Maharashtra.

Decision: The Council decided to defer the issue for further examination.

5.77 Joint Secretary, TRU then presented the issues pertaining to services mentioned in Annexure-V where the Fitment Committee had recommended for no change.

5.78 She stated that the first agenda item in Annexure V pertained to proposal to apply uniform GST rate of 5% on Business Correspondent services provided in both rural and urban areas. She stated that the issue was examined by the Fitment Committee and it was felt that the specific exemption provided by Business Correspondents to banking companies in respect of rural area branches has been given in line with the objectives of

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financial inclusion and therefore, the Fitment Committee had recommended to maintain status quo.

Decision: The Council approved the recommendation of the Fitment Committee for rejecting the proposal for uniform GST rate of 5% on Business Correspondent services provided in both urban and rural areas.

5.79 Joint Secretary, TRU then presented the issue mentioned at Sr. No. 2 of Annexure-V of Agenda No. 4(e) regarding request to bring renting of residential dwellings by registered persons to registered persons under Forward Charge Mechanism where the Fitment Committee had recommended to maintain status quo as no real life examples or difficulties in implementation of the said notification were brought to notice

Decision: The Council approved the recommendation of the Fitment Committee.

5.80 Joint Secretary, TRU then presented the issue regarding request to clarify that 'sale of land' includes assignment of leasehold rights in such land and stated that Fitment Committee examined the issue and recommended that the request be not acceded to because sale of land and assignment of leasehold rights are not one and the same thing and the question of lease of land being covered under entry 5 of Schedule III which deals with sale of land and building does not arise. She stated that the agenda was also discussed in the officers' meeting and no objections were raised.

Decision: The Council approved the recommendation of the Fitment Committee that assignment of leasehold rights in land is not covered under Entry No. 5 of Schedule III of the CGST Act, 2017.

5.81 Joint Secretary, TRU then presented the next agenda pertaining to request to provide exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST. She stated that entry at S.No.41 of notification No.12/2017- CTR exempts long term lease of industrial plots by state government Industrial Development Corporations or Undertakings etc. but does not cover reassignment or sub-leasing of leasehold rights of land by the lessee. She further stated that the Fitment Committee did not recommend any change but recommended referring the issue of whether ITC of lease of land would be available to the Law Committee for examination.

5.82 The Hon'ble Member from Maharashtra stated that plots allotted to industries through MIDC are exempt. However, on further transfer, no exemption was available. He requested for considering exemption as the plots were meant for industrial use only.

5.83 The Hon'ble Member from Goa supported the view of the member from Maharashtra.

5.84 The Secretary stated that presently ITC is not available on reassignment and the officers' view was that ITC should be available in such cases and further stated that the issue regarding availability of ITC would be examined by the Law Committee at the earliest and would be brought before the Council in the next meeting.

Decision: The Council approved the recommendation of Fitment Committee to not exempt reassignment of leasehold rights of land from GST where the initial lease was exempt from GST. It also desired that the admissibility of ITC may be examined and put up to the Council.

5.85 Joint Secretary, TRU stated that the next agenda was a request from the state of Nagaland to keep rate of GST @ 12% on works contract services which commenced prior to 18.07.2022. She stated that based on the recommendations of the GST Council in its 47th



meeting, rate of GST on works contract services supplied to Central and State Governments for specified projects has been increased from 12% to 18% and that the Fitment Committee recommended maintaining status quo as continuing 12% rate for old contracts would lead to complication of tax rate structure.

Decision: The Council approved the recommendations of the Fitment Committee.

5.86 Joint Secretary, TRU then presented the item regarding request to clarify whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the RERA Act, 2016

5.87 The Hon'ble member from Maharashtra suggested that RERA authorities should also be consulted while deciding the issue.

5.88 The Hon'ble Chairperson clarified that the agenda was deferred and RERA authorities would be consulted.

Decision: The Council deferred the agenda item for further examination.

5.89 Joint Secretary, TRU then presented the item regarding the proposal of state of Punjab requested to levy GST on renting of commercial property on RCM basis and stated that the same was agreed to be deferred in the Officers' meeting as Punjab's view was not considered in the Fitment Committee and sought permission of the Council to defer the issue.

Decision: The Council deferred the agenda item for further examination.

5.90 Joint Secretary, TRU then stated that 10 issues as mentioned in Annexure- VI were recommended to be deferred by the Fitment Committee further examination.

Decision: The Council agreed with the recommendations.

6. Agenda Item 5: Performance Report of Competition Commission of India (CCI) along with Performance Reports of State Level Screening Committee (SLSC), Standing Committee (SC) and Directorate General of Anti- Profiteering (DGAP) for 1st quarter of the F.Y 2023-24.

6.1 The Secretary presented the Agenda No. 5 regarding Performance Report of Competition Commission of India (CCI) 1st quarter of the F.Y 2023-24 along with the Performance Report of State Level Screening Committee (SLSC), Standing Committee (SC) and Directorate General of Anti- Profiteering (DGAP) for the information of the Council.

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

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

7.1 The Joint Secretary, GST Council Secretariat presented the Agenda No. 6 i.e., Ad-hoc exemption orders issued under Section 25(2) of the Customs Act, 1962 to be placed before GST Council for information. She informed that in the 26th meeting of the GST Council held on 10.03. 2018, it was decided that all the ad-hoc exemption orders issued with the approval of the Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014-Customs dated 19.08.2014 as was the case prior to the implementation of GST, shall be placed before the GST Council for information.

7.2 The Joint Secretary, GST Council Secretariat informed the Council that three

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Ad-hoc exemption orders had been issued since last meeting of the GST Council. The First Order No. 06 of 2023 dated 28/08/2023 pertained to Request from Disaster Management Division (DMD), MHA, for Ad hoc exemption for import of instruments for implementation of pilot project on Glacial Lake Outburst Flood (GLOF) risk in Sikkim. The second Order No. 07 of 2023 dated 29/08/2023 was regarding request from Department of School Education & Literacy, Ministry of Education for Ad hoc exemption for import of 1.15 million footballs for distribution amongst Schools in India and the third Order No 08 of 2023 was regarding request from the Ministry of External Affairs for Ad hoc exemption for import of Dornier Engines to be exported to Seychelles.

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

8. Agenda Item 7: Review of revenue position under Goods and Services Tax

8.1 The Joint Secretary, Department of Revenue presented the Agenda to the Council. He stated that a good growth rate was being seen on the GST front but the growth on IGST on import of goods had been subdued. He informed the Council that there had been an overall growth of 11% in the gross GST revenues. He presented to the Council the details of GST revenue and stated that the GST revenues had been approximately 1.6 lakh crores from April to August in FY 2023-24. He further informed that the GST revenues for the month of September had also crossed 1.6 lakh crores. He presented to the Council the details of IGST settlement and informed that the IGST settled was slightly more than what was collected. He then presented the details of Compensation Cess collected since the implementation of GST till July 2023 and the compensation released till September 2023. He presented the status of the receipt and processing of AG's certificate from the States for release of compensation.

8.2 The Hon'ble Member from Karnataka requested the Centre to expedite the process at the CAG office as well.

8.3 The Hon'ble Chairperson urged the States yet to submit the AG's certificate to expedite the process. She also assured that the process at CAG will be expedited.

8.4 The Joint Secretary, Department of Revenue then presented the data pertaining to the percentage of filing and informed the Council that the filing percentage was good and there was no concern in the same.

8.5 The Hon'ble Member from Karnataka stated that they had made a written request for a discussion on cess and surcharge collection. He further elaborated that the intent of the request was to understand the repayment schedule of the loans taken to pay compensation to states and the status of Compensation Cess post repayment of the loans. He stated that levy of cesses and surcharges were justified on the basis of need to pay compensation to States for loss of revenue. He informed that Karnataka had a robust collection of cess and surcharges which had seen a growth of around Rs 2000 crores in the current year as compared to the same period in the previous year. He stated that if the trend was the same across the country then the loans may be repaid at an earlier date and post repayment, the levy of cesses and surcharges would lapse. He expressed that Karnataka's intent was for cesses to continue and requested for a detailed study on the issue.

8.6 The Secretary agreed to the observations by the Hon'ble Member from Karnataka and stated that there was time till 2026 for repayment of loans.

8.7 The Hon'ble Chairperson clarified that while post March 2026, Compensation cess could not be collected based on the Compensation to States Act, 2017, the Council had the prerogative to devise some mechanism to collect cess.

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8.8 The Hon'ble Member from Karnataka sought an initiation of debate and discussion on this for perspective planning. He requested the Secretariat to present details of the borrowings, growth in cess and estimated repayment schedule of loan factoring in the growth in cess in the next meeting.

8.9 The Secretary agreed to provide the same. He brought to the notice of the Council that there was a certain amount of surplus IGST every month / quarter. He informed the Council that presently 50 percent was being allotted to Centre and the remaining was being distributed between the States on the basis of their revenues during 2015-16. He stated that there had been changes in the proportion of revenues of the States and submitted for the consideration of the Council if there was a need to revise the base year.

8.10 The Hon'ble Chairperson stated that this was a matter that required extensive study and that the devolution of surplus IGST and levy of cess post March 2026 would be studied in detail and discussed in Council.

8.11 The Hon'ble Member from Kerala stated that the revenue share of Kerala State was not commensurate with its consumption. He further stated that IGST revenue from various sectors like online trading, e-commerce, etc. were not properly accruing to the State. He requested for a detailed examination of the devolution of surplus IGST.

8.12 The Hon'ble Member from Manipur informed the Council that the growth in GST revenues for the State during April, 2023 was 35%, however due to the violent unrest in the state from 3rd May, 2023 there had been a drastic decline in the growth. He stated that the violence caused several hindrances such as closure of markets, suspension of e-commerce activities, blockage of highways, break down of internet, stoppage of construction activities, etc. He stated that those had resulted in the financial position of the State being very grim. He requested the Hon'ble Chairperson to provide financial assistance for the State.

Decision : It was decided that a complete picture of the compensation cess, the likely time by which loan will be repaid and the proposal for tax/cess in lieu of compensation cess post repayment be presented to the Council.

9. Agenda Item 8: Table Agenda-Exemption from 5% IGST levy for foreign flag foreign going vessels being operated by an entity not registered under GST in India when it converts to coastal run

9.1 Joint Secretary, TRU sought permission of the Chair to introduce a Table Agenda due to the urgency of the issue. Upon being permitted by the Chair, she stated that the Agenda pertained to a proposal to exempt foreign flag foreign going vessels from IGST levy when they convert to coastal run vessels and operate in coastal waters. She informed the Council that reference had been received from Ministry of Ports, Shipping and Waterways (MoPSW) for granting permission for a cruise ship to remain and sail as a foreign-run vessel and considered as a conveyance during its deployment in Indian waters. She stated that presently all goods, vessels, ships imported under lease attract Nil IGST vide S. No. 557B of 50/2017-Customs, however those foreign vessels that do not enter into a lease arrangement will have to pay 5% IGST on the full value of the vessel. She further informed the Council that since foreign vessels were not registered under GST Law, they were not eligible for input tax credit leading to huge operational cost for them which goes against the idea of promoting tourism. She referred to the specific case of the Cruise ship Costa Serena as received from Ministry of Shipping which would have to convert to coastal run for operating the cruises in coastal waters (Mumbai -Goa- Mumbai and Mumbai-Kochi- Lakshadweep-Mumbai) and they would be operating in coastal waters for two months. She further stated that since the cruise ship operator did not intend to enter into a lease arrangement, they would be liable to pay IGST of 5% on the value of the vessel upon conversion to coastal run. The

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proposal was to exempt foreign flag foreign going vessels from levy of IGST subject to the condition that they reconvert to foreign going vessel within a period of 6 months.

9.2 The Secretary stated that the agenda was received only a few days ago and is being put up as a table agenda in view of the urgency. It was discussed in Officers' meeting.

9.3 The Hon'ble Member from Goa welcomed the proposal.

Decision: The Council agreed to the said recommendation of the Fitment Committee to exempt foreign flag, foreign going vessels from 5% IGST levy upon conversion to coastal run subject to the condition that it reconverts to foreign going vessel within a period of 6 months. However, applicable duties on stores, fuel etc. will continue to be paid.

10. Agenda Item 9: Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route.

10.1 The Principal Commissioner, GST Policy Wing stated that the agenda was regarding amendment of Notification no 1/2023- IGST, dated 31st July, 2023 issued as per the recommendations of the 50th Council meeting to restrict IGST refund on certain evasion prone commodities such as Pan masala, Gutkha, etc. based on the report of the Group of Ministers on capacity-based taxation. He stated that in the 50th Council meeting, it was also recommended to notify amendments in section 16(3) and 16(4) of the IGST Act, 2017 made through the Finance Act, 2021 with effect from 1.10.2023. The amendments provided that the default route of refunds of unutilised input tax credit in respect of zero rated supply would be LUT mode and IGST refund would be permitted only for the class of persons or class of goods or services as may be notified by the Government.

10.2 He informed the Council that the said Notification was issued with effect from 01.10.2023 in accordance with the recommendations of Council which allowed export of all goods and services as the goods and services on supply of which IGST could be paid and refund obtained except those export of those goods which had been recommended by the Group of Ministers. He stated that since supplies to SEZ units or developers were not exports but zero-rated supplies, thus they were not covered by the said Notification and hence, such supplies are no more eligible with effect from 01.10.2023 to be made on payment of IGST and subsequent refund of IGST thus paid. to claim IGST refund. He stated that the only mode of refund available for zero rated supplies to SEZ units and developers has become the refund of accumulated ITC after issuance of Notification 1/2023 IGST. He informed the council that this was never the intention of the Council and had also not been recommended by the Group of Ministers. Hence, to remove this anomaly, an amendment has been proposed in the said notification with effect from 1.10. 2023 to allow IGST refund in case of zero rated supplies to SEZ units and developers through IGST route. He informed the Council that in the Officers' meeting held on 06.10.2023, it was suggested that the goods prone to evasion, which have been excluded from claiming IGST refund on export, should also be excluded from IGST refund route for zero rated supplies made to SEZ.

10.3 Accordingly, it was proposed to amend Notification No 01/2023 -IGST, dated 31st July 2023, w.e.f. 01.10.2023 as-

"In exercise of the powers conferred by sub-section (4) of section 16 of the Integrated Goods

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and Services Tax Act, 2017 (13 of 2017) (hereafter referred to as the "said Act"), the Central Government on the recommendations of the Council, hereby notifies

- i. all goods or services (except the goods specified in column (3) of the TABLE below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and
- ii. all suppliers (other than suppliers of goods specified in column (3) of the TABLE below) to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as the class of persons who may make supply of goods or services (except the goods specified in column (3) of the TABLE below) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid."

Decision: The Council agreed with the said proposal and the recommendation made in the Officers' meeting on the draft notification.

11. Agenda Item 10: General Discussion with the permission of the Chair

11.1 The Hon'ble Member from Bihar during the discussion of Agenda Item pertaining to clarification on issues related to Place of Supply raised the issue regarding Place of supply for Online services. He stated that the recent amendment in rule 46(f) of the CGST Rules, 2017 on 'Online Gaming' should be made applicable to 'other Online Services' as well. He further proposed that so far as 'Online Gaming' was concerned, a proper mechanism be designed so as to capture the place of residence of a user/player. He raised his concern over the place of supply in such cases where user/player of 'online games' goes out of the State and plays online games then the State to which a user/player belongs to loses the revenue while the other State gets the benefit. He therefore suggested that the mechanism should ascertain/ verify the actual permanent place of residence of the user/player. He stated that small and underdeveloped states could be losing revenue.

11.2 The Secretary informed that the issue raised by the Hon'ble Member of Bihar was discussed in the previous Council meeting and based on the recommendation, necessary changes have been made in the CGST Rules and the requisite notification has been issued. He further emphasized that necessary changes in the Rules have been made both in respect of 'Online Games' as well as 'Other online Services'. However, ascertaining/verification of the address of consumer/user/player was the work of enforcement agencies. It was informed that whatever address has been mentioned by the consumer/user/player, the same address is considered as place of supply and any stringent measure for providing the proof would be against the interest of consumer convenience and ease.

11.3 The Hon'ble Chairperson said that it was not legal to consider the consumer /user /player's original place of residence if they have provided a different address. Moreover, it could not be the job of the Secretariat to trace the original place of residence of every consumer/user/player.

11.4 The Hon'ble Member from Delhi sought the permission of the Hon'ble Chairperson to place an agenda before the Council. She stated that the Council had deliberated much on the issue of taxing online gaming and had arrived at the decision to tax it at 28% from the 1st of October, 2023. However, she expressed concern on the matter that the Directorate General of GST Intelligence (DGGI) had sent demand notices of about Rs. 1.5 lakh crore to 80 online gaming companies, even before the implementation of the decision by the Council. She further stated that while it could be claimed that the Council decision was

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a clarification and not a retrospective taxation, demanding tax for the past years appeared to be in bad faith. She stated that this affects industry, discourages young entrepreneurs as well as foreign investors. She also stated that the demand made by DGGI was on every game as opposed to the decision of the Council to tax the deposit in case of online gaming. She requested that the Council may take a decision that DGGI should withdraw the said notices issued by them.

11.5 The Hon'ble Member from Goa stated that while they had accepted the decision of the Council to tax the casinos at 28% and review the decision after six months, it was a matter of concern to the State of Goa. He stated that DGGI had been conducting raids and issuing notices demanding tax which was much more than the worth of the casinos. He stated that demanding tax for the past period amounted to retrospective taxation and would be detrimental to the industry. He submitted that the casinos had collected tax at 18% as was the practice in the pre- GST era and paid the same and the said notices demanded tax that they had not collected. He also stated that as the State of Goa was heavily dependent on the casino and allied industries, decline in revenue from them would affect the prosperity of the State. He requested the Council to take measures to withdraw the notices issued by DGGI and stop demanding tax on past period.

11.6 The Hon'ble Member from West Bengal stated that the matter of retrospective taxation should be looked into. She stated that it had to be decided whether the industry should be made to pay what they had not collected. She further requested the Hon'ble Chairperson to allow her to bring another aspect to the Hon'ble Chairperson's notice. She pointed out that Bengal had always tried to contribute towards the growth of GST and also added that she believed that the interest of the people had always been the foremost while taking any decision in the Council. She requested the Hon'ble Chairperson to kindly take necessary steps for disbursement of the funds allotted to the State of West Bengal with respect to MGNREGA and PM Awaas Yojana.

11.7 The Hon'ble Member from Maharashtra agreed with the concerns raised by Goa. He submitted that taxation should not be retrospective and tax at 28% on online gaming and casinos should be implemented from this year onwards.

11.8 The Hon'ble Member from Meghalaya agreed with the statements made by Delhi and Goa. He stated that it was improper to make the industry pay tax which was not collected by them. He urged the Council to take a decision to stop such retrospective taxation.

11.9 The Hon'ble Chairperson replied that the concern expressed by the Members regarding retrospective taxation was legitimate and well taken. However, she clarified that the DGGI was an independent regulatory body. She assured the Council that the concerns of the Council could be conveyed to DGGI.

11.10 The Hon'ble Member from Delhi requested the Council to take a decision that the amendment to taxation of online gaming would not be retrospective as such taxation would kill the industry.

11.11 The Secretary clarified that the amendment was prospective coming into force from 1st of October 2023. The notices issued by DGGI for the past period were under the law as it existed prior to 1st of October 2023 and not a retrospective application of the Council's decision.

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11.12 The Hon'ble Chairperson stated that the Council represented the country and wanted investment for the country as well as opportunities for the youth. She stated that it is never the intent of the Council to kill an industry. However, all industries are to be regulated. She further stated that the Council shall take decisions to generate income from industries including sunrise industries.

11.13 The Secretary thanked the Hon'ble Chairperson and the Members of the Council for their contribution in the meeting.

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List of Hon'ble Members/Ministers from the States/UTs who participated in the 52nd Meeting of the GST Council held on 07.10.2023

S. No.	Name of States	Name of Hon'ble Ministers/Member of GST Council	Designation
1	GOI	Smt. Nirmala Sitharaman	Union Finance Minister
2	GOI	Shri Pankaj Chaudhary	Minister of State for Finance
3	Andhra Pradesh	Shri Buggana Rajendranath	Minister for Finance, Planning, Legislative Affairs, Commercial Taxes and Skill Development & Training
4	Assam	Smt. Ajanta Neog	Finance Minister
5	Bihar	Shri Vijay Kumar Chaudhary	Minister for Commercial Tax
6	Chhattisgarh	Shri T.S.Singh Deo	Deputy Chief Minister
7	Delhi	Smt. Atishi Marlena	Finance Minister
8	Goa	Dr. Pramod Sawant	Chief Minister/Finance Minister
9	Goa	Shri Mauvin Godinho	Minister for Industries, Transport, Panchayati Raj and Protocol
10	Gujarat	Shri Kanubhai Desai	Minister for Finance
11	Himachal Pradesh	Shri Harshwardhan Chauhan	Industries Minister
12	Jammu and Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Hon'ble Lieutenant Governor, UT of J&K
13	Karnataka	Shri Krishna Byre Gowda	Minister for Revenue Department
14	Kerala	Shri K. N. Balagopal	Finance Minister
15	Maharashtra	Shri Deepak Vasant Kesarkar	Cabinet Minister for Ministry of Education and Ministry of Marathi Language

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16	Manipur	Dr. Sapam Ranjan Singh	Minister for Medical, Health & Family Welfare Department and Publicity & Information Department
17	Meghalaya	Shri Conrad K. Sangma	Chief Minister
18	Odisha	Shri Bikram Keshari Arukha	Minister for Finance
19	Punjab	Shri Harpal Singh Cheema	Finance Minister
20	Tamil Nadu	Shri Thangam Thennarasu	Minister for Finance and Human Resources Management
21	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs
22	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Finance

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List of officers from the Centre and the States/UTs who attended the 52nd Meeting of the GST Council held on 07.10.2023

S.No.	Name of State/CBIC/GSTC/GOI/ GSTN/DoR/TRU/POLICY WING	Guest's Name	Designation
1	DoR	Shri Sanjay Malhotra	Revenue Secretary
2	CBIC	Shri Sanjay Kumar Agarwal	Chairman CBIC
3	CBIC	Shri Rajiv Talwar	Member(Compliance Management)
4	CBIC	Shri Shashank Priya	Member (GST)
5	CBIC	Shri Vivek Ranjan	Member (Tax Policy and Legal)
6	DOR	Shri Vivek Aggarwal	Additional Secretary (Revenue)
7	DOR	Shri Ritvik Pandey	Joint Secretary (Revenue)
8	DG Systems (CBIC)	Yogendra Garg	Director General Systems CBIC
9	GST POLICY WING	Shri Sanjay Mangal	Principal Commissioner
10	GST Council Secretariat	Shri Pankaj Kumar Singh	Additional Secretary (GST Council Secretariat)
11	GST Council Secretariat	Ms. Ashima Bansal	Joint Secretary
12	GSTN	Shri Manish Kumar Sinha	CEO
13	GSTN	Shri Dheeraj Rastogi	EVP
14	TRU	Ms. Limatula Yaden	Joint Secretary
15	DoR	Dr. N Gandhi Kumar	Director (State Taxes)

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16	TRU	Shri. Pramod Kumar	OSD Commissioner in-situ
17	DoR	Shri Deepak Kapoor	OSD to Revenue Secretary
18	CBIC	Shri Aditya Bhardwaj	OSD to Chairman
19	Government of India	Shri S.S. Nakul, IAS	PS to FM
20	Government of India	Shri Vishnu Singh	PA to FM
21	Government of India	Shri Ankit Jalan	Additional PS to FM
22	Government of India	Shri Alkesh Uttam	OSD to MoS
23	Government of India	Shri Dhruv Narayan Srivastava	1ST PA to MoS
24	DoR	Shri Vikas Kumar	OSD (State Taxes)
25	DoR	Ms. Mamta Yadav	Assistant Secretary
26	DoR	Shri Ravi Kumar Meena	Assistant Secretary
27	DoR	Shri Rinku	Assistant Secretary
28	GST POLICY WING	Shri Raghavendra Pal Singh	Additional Commissioner
29	GST POLICY WING	Dr. Gurbaz Sandhu	Additional Commissioner
30	GST POLICY WING	Shrunkhala Kangale	Additional Commissioner
31	TRU	Rakesh Dahiya	DS, TRU-I
32	TRU	Ms Amreeta Titus	DS, TRU-I
33	TRU	Ms. Puneeta Bedi	OSD

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34	GSTN	Siddharth Jain	Joint Commissioner
35	GSTN	Shri Naveen Agrawal	OSD to CEO
36	TRU	Shri Vikram Wanere	Under Secretary, TRU-I
37	TRU	Ms. Smita Roy	Technical Officer, TRU-II
38	MoS Finance	Shri Gaurav Shukla	Under Secretary
39	GST POLICY WING	Neha Yadav	Deputy Commissioner
40	GST POLICY WING	Amit Samdariya	Deputy Commissioner
41	GST POLICY WING	Soumya	Deputy Commissioner
42	TRU	Ms. Anna Sosa Thomas	Technical Officer, TRU-II
43	NACIN	Shri Vivek Jain	Director
44	NACIN	Shri Harsh Parashar	Officer on Training
45	NACIN	Shri Saahil Khare	Officer on Training
46	NACIN	Ms. Akshita Srivastava	Officer on Training
47	NACIN	Shri Vishal Chaudhary	Officer on Training
48	NACIN	Shri Shreyansh Surana	Officer on Training
49	PIB	Ms. Nanu Bhasin	ADG (M&C), MoF
50	PIB	Shri. Virat Majboor	JD, MoF
51	PIB	Shri. Kush Mohan Nahar	M&CO, MoF

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52	GST Council Secretariat	Shri Kshitendra Verma	Director	
53	GST Council Secretariat	Shri S.S.Shardool	Director	
54	GST Council Secretariat	Shri Joginder Singh Mor	Under Secretary	
55	GST Council Secretariat	Ms. Subhaga Ann Varghese	Under Secretary	
56	GST Council Secretariat	Ms. Sonia	Superintendent	
57	GST Council Secretariat	Shri Dharambir	Superintendent	
58	GST Council Secretariat	Shri Vineet Kumar	Superintendent	
59	GST Council Secretariat	Shri Naveen Kumar	Superintendent	
60	GST Council Secretariat	Shri Mohan Lal	Superintendent	
61	GST Council Secretariat	Ms. Ambika Rani	Superintendent	
62	GST Council Secretariat	Shri Niranjan Kishore	Superintendent	
63	GST Council Secretariat	Shri Om Ram Meena	Section Officer	
64	GST Council Secretariat	Shri Sandeep Kumar	Superintendent	
65	GST Council Secretariat	Shri Khupmang Neihsial	Superintendent	
66	GST Council Secretariat	Shri Himanshu Bhardwaj	Superintendent	
67	GST Council Secretariat	Shri Sudhir Kumar	Section Officer	
68	GST Council Secretariat	Shri L. Seikholen Haokip	Section Officer	
69	GST Council Secretariat	Shri Vijay Malik	Inspector	

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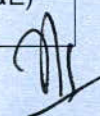
70	GST Council Secretariat	Shri Padam Singh	Inspector
71	GST Council Secretariat	Shri Ashwani Sharma	Inspector
72	GST Council Secretariat	Shri Anand Singh	Inspector
73	GST Council Secretariat	Shri Karan Arora	Inspector
74	GST Council Secretariat	Shri Tarun	Inspector
75	GST Council Secretariat	Shri Pankaj Dhaka	Tax Assistant
76	GST Council Secretariat	Shri Paresh Garg	Tax Assistant
77	GST Council Secretariat	Shri Shyam Bihari Meena	Tax Assistant
78	GST Council Secretariat	Shri Vikas Kumar	Tax Assistant
80	Andhra Pradesh	Shri N. Gulzar	Secretary Finance(CT)
81	Andhra Pradesh	Sri JVM. Sarma	Additional Commissioner (ST), Appellate Tribunal
82	Arunachal Pradesh	Shri Lobsang Tsering	Commissioner (Tax, Excise & Narcotics)
83	Arunachal Pradesh	Shri Nakut Padung	Superintendent (Tax, Excise & Narcotics)
84	Assam	Shri Rakesh Agarwalla	Principal Commissioner of State Tax
85	Assam	Shri Brinchi Das	PS to Hon'ble Minister
86	Bihar	Dr. Pratima	Commissioner cum Secretary Commercial Taxes
87	Bihar	Shri Krishna Kumar	Joint Secretary, Commercial Taxes

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88	Bihar	Shri Binod Kumar Jha	Additional Commissioner State Tax
89	Bihar	Shri Kunal Kashyap	Treasury Officer Bihar Bhawan
90	Chandigarh	Sh. Vinay Pratap Singh	Deputy Commissioner-cum-Excise and Taxation Commissioner
91	Chandigarh	Sh. Alok Passi	Asstt. Excise and Taxation Commissioner
92	Chhattisgarh	Shri Himshikhar Gupta	Secretary, Commercial Tax (State Tax)
93	Chhattisgarh	Shri Ritesh Kumar Agrawal	Commissioner of State Tax
94	Chhattisgarh	Shri Tarun Kiran	Deputy Commissioner, State Tax
95	Delhi	Shri A Anbarasu	Principal Commissioner (State Tax)
96	Delhi	Shri Awanish Kumar	Special Commissioner (State Tax)
97	Goa	Shri S.S.Gill	Commissioner of State Tax
98	Goa	Shri Vishant S.N.Gaunekar	Additional Commissioner of State Tax
99	Goa	Shri Gaurish Kalangutkar	OSD to CM
100	Gujarat	Shri J.P. Gupta	Additional Chief Secretary, Finance Department
101	Gujarat	Shri Samir Vakil	Chief Commissioner of State Tax (I/c)
102	Haryana	Shri Devinder Singh Kalyan	Principal Secretary to Government Haryana, Excise and Taxation Department.
103	Haryana	Shri Ashok Kumar Meena	Excise & Taxation Commissioner-cum-Secretary to Government
104	Haryana	Dr. Hemant Kumar, IRS	Additional Commissioner, GST, Excise and taxation Department
105	Himachal Pradesh	Shri Bharat Harbans Lal Khara	Principal Secretary (ST&E)

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106	Himachal Pradesh	Dr. Yunus	Commissioner State Taxes and Excise
107	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner State Taxes and Excise
108	Jammu and Kashmir	Dr. Rashmi Singh	Commissioner, State Taxes
109	Jammu and Kashmir	Ms. Namrita Dogra	Additional Commissioner, State Taxes (Admn & Enft)
110	Jharkhand	Ms. Vipra Bhal	Secretary, Commercial Taxes
111	Jharkhand	Shri Santosh Kumar Vatsa	Commissioner, Commercial Taxes
112	Jharkhand	Shri Brajesh Kumar	Assistant Commissioner of State Taxes
113	Karnataka	Ms. C. Shikha	Commissioner Commercial Tax
114	Karnataka	Dr. Ravi Prasad	Additional Commissioner CT
115	Kerala	Shri Patil Ajit Bhagwatrao	Commissioner, State GST Department
116	Kerala	Shri Abraham Renn S	Additional Commissioner-1, GST Department
117	Kerala	Dr. Shyjan D	PS to Hon'ble Minister (Finance)
118	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner, Commercial Tax
119	Madhya Pradesh	Shri Manoj Kumar Choubey	Additional Commissioner, Commercial Tax
120	Maharashtra	Ms Shaila A	Principal Secretary (Financial Reforms)
121	Maharashtra	Shri Rajeev Kumar Mital	Commissioner SGST
122	Maharashtra	Shri Anil Bhosle	OSD to Hon'ble Minister
123	Maharashtra	Shri Manojkumar Narayanwal	Deputy Commissioner

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124	Manipur	Ms. Mercina R. Panmei	Commissioner of Taxes
125	Manipur	Shri Y. Indrakumar Singh	Joint Commissioner of Taxes
126	Meghalaya	Shri Sanjay Goyal	Commissioner & Secretary, Taxation
127	Meghalaya	Shri Ramakrishna Chitturi	Commissioner of Taxes
128	Meghalaya	Shri L Khongsit	Additional Commissioner of Taxes
129	Meghalaya	Shri V R Challam	Deputy Commissioner of Taxes
130	Meghalaya	Shri Mukesh Kumar	OSD to Hon'ble Minister
131	Mizoram	Shri R. Zosiamliana	Commissioner of State Tax
132	Mizoram	HK Lalhawngliana	Additional Commissioner of State Tax
133	Nagaland	Shri C Lima Imsong	Additional Commissioner of State Taxes
134	Odisha	Shri Vishal Kumar Dev	Principal Secretary, Finance
135	Odisha	Shri Sanjay Kumar Singh	Chief Commissioner of Commercial Taxes & GST
136	Odisha	Shri Kunu Padhi	Joint Commissioner of CT & GST (Policy)
137	Odisha	Shri Dinakrushna Kar	PS to FM
138	Odisha	B. Ganesh	Liaison Officer
139	Puducherry	Shri L. Mohamed Mansoor	Commissioner of State Tax
140	Puducherry	S. Rewathi	Assistant Commissioner of State Tax (A&I)

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141	Punjab	Shri. Arshdeep Singh Thind	Commissioner of State Tax
142	Punjab	Shri Ravneet Khurana	Additional Commissioner of State Taxes (Audit)
143	Rajasthan	Shri Ravi Kumar Surpur	Chief Commissioner of State Tax
144	Rajasthan	Shri Arvind Mishra	Advisor (Additional Commissioner GST)
145	Tamil Nadu	Shri Dheeraj Kumar	Principal Secretary/Commissioner of Commercial Taxes
146	Tamil Nadu	Thiru G. Nanakumar	Additional Commissioner (Policy & Public Relations)(FAC)
147	Tamil Nadu	S. Subhash Chandra Bose	Joint Commissioner (Policy)
148	Telangana	Smt T.K Sreedevi, I.A.S	Commissioner of Commercial Taxes
149	Telangana	Sri G. Phaneendra Reddy	Additional Commissioner(ST) (Policy)
150	Telangana	Ms. K Rupa Sowmya	Deputy Commissioner State Tax, Policy
151	Tripura	Ms. Rakhi Biswas	TCS-SSG, Chief Commissioner of State Tax,
152	Tripura	Shri Ashin Barman	Assistant Commissioner of Taxes
153	Uttar Pradesh	Shri Nitin Ramesh Gokarn	Principal Secretary, State Tax
154	Uttar Pradesh	Ms. Ministhy S	Commissioner, State Tax
155	Uttar Pradesh	Shri Paritosh Kumar Mishra	Deputy Commissioner, State Tax HQ, Lucknow
156	Uttar Pradesh	Shri Amit Pandey	PS to Honourable Minister
157	Uttarakhand	Dr. Ahmad Iqbal	Commissioner of State Tax

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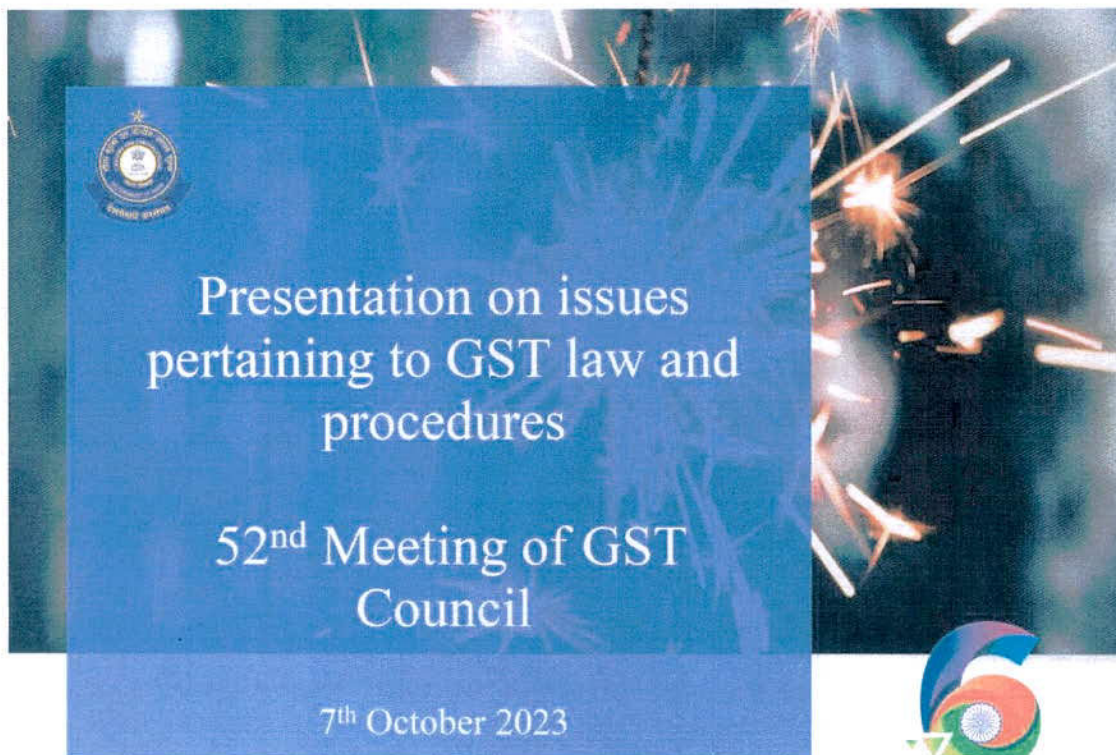
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158	Uttarakhand	Shri Anil Singh	Additional Commissioner
159	Uttarakhand	Shri Anurag Mishra	Joint Commissioner
160	West Bengal	Dr. Manoj Pant	Additional Chief Secretary, Finance Department
161	West Bengal	Shri Khalid Aizaz Anwar	Commissioner of State Tax
162	West Bengal	Shri Rajib Sankar Sengupta	Senior Joint Commissioner of Revenue
163	West Bengal	Shantanu Naha	OSD to Minister

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Summary of discussions in Officers' Meeting held on 6th October 2023

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Agenda No	Issue/Proposal	Status during Officers Meeting
3(i) [Vol 1- Pg. 243- 245]	<p>Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals</p> <ul style="list-style-type: none"> to make an amendment to section 110 of the CGST Act, 2017 : <ul style="list-style-type: none"> to insert provision relating to eligibility of an Advocate with a standing of 10 years at the Bar with substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court for the appointment as judicial member Minimum age for appointment of member or president of Tribunal to be specified as 50 years; Tenure of president and members to be upto a maximum age of 70 years and 67 years respectively. 	<p><u>Agreed.</u></p> <p>It was also discussed that there will be no need for amendment in SGST Acts.</p>

Agenda No	Issue/Proposal	Status during Officers Meeting
3(ii) [Vol 1- Pg. 246- 257]	<p>Issuance of clarification on taxability and valuation of Personal Guarantee by Directors for companies and Corporate Guarantee by companies for related person</p> <ul style="list-style-type: none"> Issue 1: Taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company <ul style="list-style-type: none"> It may be clarified through a circular that in cases where no consideration is paid by the company to the director in any form, directly or indirectly, for providing guarantee to the bank/ financial institutes on their behalf, as per mandate of RBI, the open market value of the said transaction/ supply may be treated as zero and accordingly taxable value of the said supply will be considered as zero. It may be clarified through a circular that in cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate or there may be other exceptional cases where remuneration/ consideration is paid to the director in any manner, directly or indirectly, the taxable value of such supply of service may be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly. 	<p><u>Agreed</u></p>

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Agenda No	Issue/Proposal	Status during Officers Meeting
3(ii) [Vol 1- Pg. 246-257]	<ul style="list-style-type: none"> Issue 2: Taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company <ul style="list-style-type: none"> to insert sub-rule (2) in Rule 28 of CGST Rules, 2017, providing that "Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher." to clarify through the Circular that after the insertion of the said sub-rule, the value of such supply of services would be governed by the proposed sub-rule (2) of rule 28 of CGST Rules, 2017 irrespective of whether full ITC is available to the recipient of services or not. 	<u>Agreed</u>

Agenda No	Issue/Proposal	Status during Officers Meeting
3(iii) [Vol 1- Pg. 258-262]	<p>Issue of delay (beyond condonation) in filing Appeals against demand orders raised under GST till a specified period</p> <ul style="list-style-type: none"> To provide one time amnesty for filing appeals in such cases through a special procedure under section 148 of CGST Act. The special procedure for filing appeal to be applicable for the taxable persons: <ul style="list-style-type: none"> who could not file an appeal under section 107 of the said Act, against the order passed by the proper officer under section 73 or 74 of the said Act on or before the 31st day of March, 2023; or whose appeal against the such order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107. The filing of appeal in such cases to be allowed subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute by the said person, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. The time limit for filing appeals under this amnesty/ special procedure may be kept up to 31st December 2023. 	<p><u>Agreed</u></p> <p>However, it was recommended that the time limit for filing of the appeals may be kept upto 31st January 2024</p>

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Agenda No	Issue/Proposal	Status during Officers Meeting
3(iv) [Vol 1- Pg. 263- 267]	<p>Law amendment w.r.t. ISD as recommended by the GST Council in its 50th meeting</p> <ul style="list-style-type: none"> amendment in definition of "input service distributor" under clause (61) of section 2 of CGST Act to define it as such office of supplier of goods or services or both which receives tax invoices including invoices in respect of services liable to tax under reverse charge basis as per sub-sections (3) or (4) of Section 9, for or on behalf of a distinct person or distinct persons, as specified in section 25 and who is liable to distribute the input tax credit in respect of such invoices in terms of section 20. amendment in section 20 of CGST Act, to explicitly mandate distribution of the common credit including with credit pertaining to common input services which are liable to tax on reverse charge basis. substitution of provisions of rule 39 of the CGST Rules by incorporating methodology for distribution of credit in rule 39. 	<u>Agreed</u>

Agenda No	Issue/Proposal	Status during Officers Meeting
3(v) [Vol 1- Pg. 268- 272]	<p>Clarification regarding restoration of provisionally attached property</p> <ul style="list-style-type: none"> an amendment in sub-rule (2) of Rule 159 of CGST Rules, 2017, to insert the words "<i>or on expiry of a period of one year from the date of issuance of order in FORM GST DRC-22, whichever is earlier.</i>" after the words "to that effect", to clearly provide that order issued under FORM GST DRC-22 shall cease to have effect after expiry of period of one year from the date of issuance. an amendment in FORM GST DRC-22 inserting the words "<i>This order shall cease to have effect, on the date of issuance of order in FORM GST DRC-23 by the Commissioner, or on the expiry of a period of one year from the date of issuance of this order, whichever is earlier.</i>" 	<p><u>Agreed.</u></p> <p>However, it was recommended in the Officers' meeting that GSTN may show alert to the tax officer on the system when the period of 1 year since provisional attachment of property is about to get over.</p>

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Agenda No	Issue/Proposal	Status during Officers Meeting
3(vi) [Vol 1- Pg. 273-282]	<p>Clarification on various issues related to Place of Supply</p> <ul style="list-style-type: none"> To clarify through a Circular that in case of service of transportation of goods, including by mail or courier: <ul style="list-style-type: none"> place of supply will be determined by the default rule under section 13(2) of IGST Act i.e. in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services. To clarify through a Circular that in case of services in respect of advertising: <ul style="list-style-type: none"> In case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure, the place of supply of services provided by the vendor to the advertising company in such case shall be governed by the provisions of section 12(3)(a) of IGST Act. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(vi) [Vol 1- Pg. 273-282]	<ul style="list-style-type: none"> In case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor and the responsibility of arranging the hoardings/ bill boards and display of advertisement on the said location lies with the vendor and during this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed whereas the advertising company is not occupying the space or the structure, the place of supply shall be determined in terms of Section 12(2) of IGST Act. To clarify through a Circular that in case of "co-location services": <ul style="list-style-type: none"> Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services", and the said services do not merely involve providing of a physical space, but also involve the supply of various components of 'Hosting and information technology (IT) infrastructure provisioning services' like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. Accordingly, the place of supply of the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service. 	Agreed

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Agenda No	Issue/Proposal	Status during Officers Meeting
3(vi) [Vol 1- Pg. 273-282]	<ul style="list-style-type: none"> However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(vii) [Vol 1- Pg. 283-288]	<p>Clarification related to export of services</p> <ul style="list-style-type: none"> to clarify through a Circular that the condition of sub-clause (iv) of Section 2(6) of the IGST Act, 2017 will be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023. 	Agreed
3(viii) [Vol 1- Pg. 289-302]	<p>Amendment in CGST Rules, 2017 and GST REG/PCT-FORMS</p> <ul style="list-style-type: none"> Incorporation of 'One Person Company' in FORM GST REG 01 i.e. Application for Registration <ul style="list-style-type: none"> to incorporate 'One Person Company' as a Constitution of Business in Part-B of FORM GST REG-01 the applicant to fill only the details of the single member or owner and to submit the application successfully on system. 	Agreed

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Agenda No	Issue/Proposal	Status during Officers Meeting
3(viii) [Vol I- Pg. 289-302]	<ul style="list-style-type: none"> Application for Enrolment as Goods and Services Tax Practitioner-Amendment in Form GST PCT-01 <ul style="list-style-type: none"> to amend the S. No. 4 of Part-B of Form GST PCT-01 in line with rule 83(1) of the CGST Rules. Application for cancellation of TCS and TDS registration- Enhancement in Form GST REG-08 format for having options for cancellation of registration against the request made by the TDS and TCS registered persons <ul style="list-style-type: none"> to substitute FORM GST REG-08 to provide for cancellation of registration against the request made by the TDS and TCS registered persons and to rephrase and re-align the reasons for cancellation in FORM GST REG-08 on the lines of those notified in respect of FORM GST REG-19. Amendment in FORM GSTR-8 to include late fee to make changes in FORM GSTR-08 : <ul style="list-style-type: none"> By substituting new Table 7 on "Interest, late fee payable and paid" in place of existing Table 6 and Table 7 to include interest on delayed submission of returns by tax payers under section 52 of the CGST Act. By inserting column for late fee as well in Table 9 on Debit entries in cash ledger for TCS, interest and late fee payment. Amendment in rule 142 (3) of the CGST Rules with respect to FORM GST DRC-05: <ul style="list-style-type: none"> rule 142 (3) may be amended so that words "intimation" shall be used instead of "order" with respect to FORM GST DRC-05. 	<u>Agreed</u>

Agenda No	Issue/Proposal	Status during Officers Meeting
3(ix) [Vol I- Pg. 303-308]	<p>Clarification eligibility of construction of roads, bridges for inverted duty structure refund</p> <ul style="list-style-type: none"> View 1: All LC members (except member from Karnataka) opined that construction of only such civil structures including a complex or building, which are intended for sale to a buyer along with land or undivided share of land, are covered under Entry 5(b) of Schedule II of CGST Act, 2017 and accordingly refund is not restricted in such cases as per the above mentioned Notification. (View 1) View 2: LC member from Karnataka opined that construction of all kinds of civil structures, including bridges, falls under Entry 5(b) of Schedule II of CGST Act, 2017 and accordingly, refund should not be admissible in respect of construction of bridges. (View 2) 	<p><u>Most of the states agreed with View 1.</u></p> <p>However, Karnataka, Punjab, Haryana, Uttar Pradesh, Kerala, Tamil Nadu and Jammu and Kashmir agreed with View 2.</p>

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Agenda No	Issue/Proposal	Status during Officers Meeting
9. [Addendum to Vol 2- Pg. XX-YY]	Amendment in Notification 1/2023-Integrated Tax to include supplies to SEZ units/ developers under IGST route <ul style="list-style-type: none"> To amend Notification No. 1/2023-Integrated Tax dated 31.07.2023 w.e.f. 01.10.2023 so as to include all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as class of persons who may make supply of goods or services to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid. 	<u>Agreed.</u> Further, it was recommended in the Officers' Meeting that the IGST refund route for supplies to SEZ be restricted for commodities like pan masala, tobacco, gutkha, etc. mentioned in the Notification No. 1/2023-Integrated Tax dated 31.07.2023. Notification to be amended accordingly.

Agenda 9: Amendment in Notification 1/2023-Integrated Tax to include supplies to SEZ units/ developers under IGST route

Formulation for Amendment in Notification 1/2023-IT dated 31.07.2023 recommended by the Officers in Officers' meeting held on 06.10.2023

"In exercise of the powers conferred by sub-section (4) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereafter referred to as the "said Act"), the Central Government on the recommendations of the Council, hereby notifies

- (i) *all goods or services (except the goods specified in column (3) of the TABLE below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and*
- (ii) *all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as the class of persons who may make supply of goods or services (except the goods specified in column (3) of the TABLE below) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid."*

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Ratification of Notifications and Circulars

Agenda 2: Ratification of Notifications, Circulars etc.

[Vol 1- Pg. 220-242]

Act/ Rules	Notificatio- ns/Circular s Nos.	Description/Remarks
CGST Act/ CGST Rules	Twenty two (22) Central Tax Notifi- cations issued (No. 27/2023 to 51/2023) & One (01) Centr- al Tax (rate) Notificatio- n issued (No. 11/2023)	<p>Notifications to implement various decisions of GST Council taken in 50th & 51st meeting & to implement other GIC decisions. Some of the important decisions are:</p> <ol style="list-style-type: none"> Notifying some provisions of Finance Act, 2021 & Finance Act, 2023 Notifying special procedures to be followed by a registered person pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018 Exempting the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year Notifying "Account Aggregator" as the systems with which information may be shared by the common portal under section 158A of the CGST Act, 2017. Waiving the requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions Notifying special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers and unregistered persons Making amendments (Second Amendment, 2023) & (Third Amendment, 2023) to the CGST Rules, 2017. Extension of the due date for furnishing FORM GSTR-1, GSTR-3B, GSTR-7 for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur Notifying supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos under section 15(5) of CGST Act and the provisions of the Central Goods and Services Tax (Amendment) Act, 2023 Amendment of Notification No 01/2017- Central Tax (Rate) dated 28.06.2017.

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Agenda 2: Ratification of Notifications, Circulars etc.

[Vol 1- Pg. 220-242]

Act/ Rules	Notifications/ Circulars Nos.	Description/Remarks
UTGST Act/ UTGST Rules	One (01) Union Territory Tax (rate) Notification issued (No. 11/2023)	To amend Notification No 01/2017- Union territory Tax (Rate) dated 28.06.2017.
IGST Act/ IGST Rules	Four (04) Integrated Tax Notifications issued (No. 1/2023 to 4/2023) & Four (04) Integrated Tax (rate) Notifications issued (No. 11/2023 to 14/2023)	<p>Notifications to implement various decisions of GST Council taken in its 50th & 51st meeting and to implement other GIC decisions:</p> <ol style="list-style-type: none"> 1. Seeks to notify all goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid. 2. Seeks to notify the provisions of the Integrated Goods and Services Tax (Amendment) Act, 2023 3. Seeks to notify the supply of online money gaming as the supply of goods on import of which, integrated tax shall be levied and collected under sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 4. Seeks to provide Simplified registration Scheme for overseas supplier of online money gaming 5. Seeks to amend notification No. 8/2017- Integrated Tax (Rate) dated 28.06.2017 to implement decisions of the 50th GST Council 6. Seeks to amend notification No. 09/2017- Integrated Tax (Rate) dated 28.06.2017 to implement decisions of the 50th GST Council 7. Seeks to amend notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 to implement decisions of the 50th GST Council 8. Seeks to amend Notification No 01/2017- Integrated Tax (Rate) dated 28.06.2017

Agenda 2: Ratification of Notifications and Circulars

[Vol 1- Pg. 220-242]

Act/ Rules	Notifications/Circulars Nos.	Description/Remarks
Circulars	Two (02) Circulars issued (Circular No. 200/12/2023-GST dated 01.08.2023 to Circular No. 201/13/2023-GST dated 01.08.2023)	<p>Circulars to implement various decisions of GST Council in its 50th meeting & to implement other GIC decisions. The issues covered in these circulars are</p> <ol style="list-style-type: none"> (i) Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023. (ii) Clarifications regarding applicability of GST on certain services

CHAIRMAN'S INITIALS

[Signature]

Agenda 2: Ratification of notifications and circulars

[Vol 1- Pg. 220-242]

- ❖ Some of these notifications and circulars have been issued **based on decisions of GST Implementation Committee (GIC)** taken during the period from **26.07.2023 to 29.09.2023**.
- ❖ The important decisions **taken by GIC** are as below :
 - Extension of due dates in filing of GSTR-1, GSTR-3B & GSTR-7 till 25.08.2023 in the state of Manipur
 - Extension of time till 01.01.2024 for implementation of Notification No. 30/2023-CT dated 31.07.2023
 - Approval of amendments in Rule 8(1), 14(1), 46(f), 64 & 87(3) of CGST Rules in respect of CGST Amendment Act, 2023 & IGST Amendment Act, 2023 regarding online money gaming
 - Approval of amendments in FORM GST REG-10 and FORM GSTR-5A
 - Issuance of Notification for levy and collection in case of import of online money gaming
 - Issuance of Notification for simplified registration for supply of online money gaming from a place outside India to a person in India under IGST Act
 - Amendment to Notification No. 1/2017-CT (rate) dated 28.06.2017

Recommendations of the Law Committee

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Law Committee Recommendations for Trade facilitation and Reducing litigation

Agenda 3(ii): Issuance of clarification on taxability and valuation of Personal Guarantee by Directors for companies and Corporate Guarantee by companies for related person (1/4) [Vol I Pg. 246-257]

Issue 1: Taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company

- ❖ Clarification has been sought regarding the taxability and valuation of the supply of personal guarantee offered by the Directors to the banks on behalf of the company.
- ❖ The activity of providing personal guarantee by the Directors to the banks on behalf of the company (related person), even without any monetary consideration, is taxable as services provided between related persons, as per Schedule I of the CGST Act.
- ❖ In cases of supplies to related persons, the taxable value of the supply is to be determined as per Rule 28 of the CGST Rules, 2017 i.e. mainly as per the open market value of such supply.
- ❖ As per the mandate of RBI, as per Para 2.2.9 of RBI Master Circular RBI/2021-22/121 dated 9th November, 2021 regarding guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns, no consideration can be charged by the director from the company for providing the bank guarantee for the purpose of sanctioning of credit facilities to the said company.



Agenda 3(ii): Issuance of clarification on taxability and valuation of Personal Guarantee by Directors for companies and Corporate Guarantee by companies for related person (2/4) [Vol I Pg. 246-257]

Proposal:

- ❖ LC has recommended that it **may be clarified through a circular** that
 - In cases where no consideration is paid by the company to the director in any form, directly or indirectly, for providing guarantee to the bank/ financial institutes on their behalf, as per mandate of RBI, the open market value of the said transaction/ supply may be treated as zero and accordingly taxable value of the said supply will be considered as zero.
 - in cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate or there may be other exceptional cases where remuneration/ consideration is paid to the director in any manner, directly or indirectly, the taxable value of such supply of service may be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.

Agenda 3(ii): Issuance of clarification on taxability and valuation of Personal Guarantee by Directors for companies and Corporate Guarantee by companies for related person (3/4) [Vol I Pg. 246-257]

Issue 2: Taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company

- The activity of providing corporate guarantee between the related companies, even without any monetary consideration, is taxable as services provided between related persons, as per Schedule I of the CGST Act.
- In such cases, the taxable value of the supply is to be determined as per Rule 28 of the CGST Rules, 2017 i.e. the open market value of such supply or as per value of services of like kind and quality or as per Rule 30 or 31 of CGST Rules, 2017.
- However, corporate guarantees, unlike bank guarantees, are specific and peculiar to a particular corporate group or company and therefore external third-party comparisons may not be available or reliable.
- Field formations as well as the taxpayers are finding it difficult to arrive at the open market value for such supply of services under Rule 28 of CGST Rules, 2017.

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Agenda 3(ii): Issuance of clarification on taxability and valuation of Personal Guarantee by Directors for companies and Corporate Guarantee by companies for related person (4/4)

[Vol 1- Pg. 246-257]

Proposal:

❖ LC has recommended:

- ❖ to **insert sub-rule (2) in Rule 28 of CGST Rules, 2017**, providing that "Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be **one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.**"
- ❖ to clarify **through the Circular** that after the insertion of the said sub-rule, the value of such supply of services would be governed by the proposed sub-rule (2) of rule 28 of CGST Rules, 2017 irrespective of whether full ITC is available to the recipient of services or not.

Agenda 3(iii): Issue of delay (beyond condonation) in filing Appeals against demand orders raised under GST till a specified period (1/2)

[Vol 1- Pg. 258-262]

Issue:

- ❖ During the initial years of implementation of GST, a number of appeals against demand orders could not be filed within the specified time period i.e., within the limitation period of three months as mentioned in Section 107(1) of the CGST Act, 2017 and the permissible delay condonation period of one month as provided in, Section 107(4) of the CGST Act, 2017, due to various reasons.
- ❖ In a lot of cases, in cases where no physical service of these notice/orders were made, the taxpayers were not aware of the notices/ orders issued to them through the common portal. Many taxpayers came to know about demand orders only upon initiation of recovery proceedings under section 79 of the CGST Act, 2017 i.e., after lapse of time prescribed for filing of appeals.
- ❖ Thus, the taxpayers are stuck in a situation where they can neither file an appeal against the demand order nor are in position to pay the demand raised by the tax authorities.

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Agenda 3(iii): Issue of delay (beyond condonation) in filing Appeals against demand orders raised under GST till a specified period (2/2)

[Vol 1- Pg. 258-262]

Proposal:

Law Committee recommended:

- To provide **one time amnesty** for filing appeals in such cases through a **special procedure under section 148 of CGST Act**.
- The special procedure for filing appeal to be applicable for the taxable persons:
 - ❖ who could not file an appeal under section 107 of the said Act, **against the order passed by the proper officer under section 73 or 74 of the said Act on or before the 31st day of March, 2023;** or
 - ❖ whose appeal against the such order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107.
- The filing of appeal in such cases to be allowed **subject to the condition of payment of an amount of pre-deposit** of 12.5% of the tax under dispute by the said person, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger.
- The **time limit** for filing appeals under this amnesty/ special procedure may be kept up to **31st December 2023**.

Agenda 3(v): Clarification regarding restoration of provisionally attached property(1/2)

Issue:

[Vol 1- Pg. 268-272]

- ❖ **Section 83(2)** of CGST Act, 2017 mentions that the provisional attachment shall **cease to have effect after the expiry of a period of one year from the date of the order** i.e. provisional attachment order in the form of FORM GST DRC-22, there is no mention of need for issuance of any order to release/ restore the provisionally attached property after expiry of this time period of one year.
- ❖ At the same time, **Rule 159(2)** of CGST Rules, 2017 mentions that the provisional attachment of a property shall be removed only on the written instructions from the Commissioner to that effect.
- ❖ It has been brought to notice that there is a confusion among the concerned revenue authorities, transport authorities, bankers and other such authorities as to whether the said encumbrance placed on the said movable or immovable property **automatically expires after a period of one year from the date of FORM GST DRC – 22**, or the said authorities have to **wait for a written instructions from the Commissioner** to that effect.

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Agenda 3(v): Clarification regarding restoration of provisionally attached property(2/2)

[Vol 1- Pg. 268-272]

Proposal

❖ **LC has recommended**

- an **amendment in sub-rule (2) of Rule 159** of CGST Rules, 2017, to insert the words *"or on expiry of a period of one year from the date of issuance of order in FORM GST DRC-22, whichever is earlier,"* after the words *"to that effect"*, to clearly provide that order issued under FORM GST DRC-22 shall cease to have effect after expiry of period of one year from the date of issuance.
- an **amendment in FORM GST DRC-22** inserting the words *"This order shall cease to have effect, on the date of issuance of order in FORM GST DRC-23 by the Commissioner, or on the expiry of a period of one year from the date of issuance of this order, whichever is earlier."*

Agenda 3(vi): Clarification on various issues related to Place of Supply(1/3)

[Vol 1- Pg. 273-282]

Issue:

- ❖ Representations have been received seeking clarification regarding the place of supply in respect of:
 - (i) services of transportation of goods, including by mail or courier, when either supplier or recipient of service is located outside India
 - (ii) services in respect of advertising
 - (iii) "co-location services"

Proposal:

❖ **LC has recommended to issue a Circular to clarify that:**

- **In case of service of transportation of goods, including by mail or courier:**
 - ✓ place of supply will be **determined by the default rule under section 13(2) of IGST Act** i.e. in cases where location of recipient of services is available, the place of supply of such services shall be **the location of recipient of services** and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the **location of supplier of services**.

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Agenda 3(vi): Clarification on various issues related to Place of Supply(2/3)

[Vol 1- Pg. 273-282]

➤ **In case of services in respect of advertising:**

- ✓ In case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure, the place of supply of services provided by the vendor to the advertising company in such case shall be governed by the provisions of **section 12(3)(a) of IGST Act.**
- ✓ In case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor and the responsibility of arranging the hoardings/ bill boards and display of advertisement on the said location lies with the vendor and during this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed whereas the advertising company is not occupying the space or the structure, the place of supply shall be determined **in terms of Section 12(2) of IGST Act.**

Agenda 3(vi): Clarification on various issues related to Place of Supply(3/3)

[Vol 1- Pg. 273-282]

➤ **In case of "co-location services"**

- ✓ Co-location services are in the nature of **"Hosting and information technology (IT) infrastructure provisioning services"**, and the said services do not merely involve providing of a physical space, but also involve the supply of various components of 'Hosting and information technology (IT) infrastructure provisioning services' like network connectivity, backup facility, firewall services, and monitoring and surveillance service **for ensuring continuous operations of the servers and related hardware**, etc. Accordingly, the place of supply of the same shall be determined by **the default place of supply provision under sub-section (2) of Section 12 of the IGST Act** i.e. location of recipient of co-location service.
- ✓ However, **in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services** and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the **supply of the service of renting of immovable property**. Accordingly, the place of supply of these services shall be determined by the **provisions of clause (a) of sub-section (3) of Section 12** of the IGST Act which is the location where the immovable property is located.

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Agenda 3(vii): Clarification related to export of services

[Vol 1- Pg. 283-288]

Issue:

- Representations have been received for clarification regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services as per the provisions of sub-clause (iv) of clause (6) of section 2 of the IGST Act, 2017.

Proposal:

- ❖ Law Committee recommended to clarify through a Circular that:
 - the condition of sub-clause (iv) of Section 2(6) of the IGST Act, 2017 will be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the **export proceeds in INR** from the balances in the **designated Special Vostro Account** of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023.

Agenda 3(ix): Clarification regarding eligibility of construction of roads, bridges for inverted duty structure refund


Issue:

[Vol 1- Pg. 303-308]

- References have been received from field formations requesting for clarification regarding applicability of Notification number 15/2017-Central Tax (Rate), dated 28.06.2017 (which restricts refund of accumulated credit on account of inverted duty structure in respect of supplies covered under Entry 5(b) of Schedule II of CGST Act, 2017) in respect of refund on account of inverted duty structure in the case of supply of certain services like **construction of bridges and roads** etc.
- If the said services are construed as civil structure under Entry 5(b) of Schedule II of CGST Act, 2017, then refund will be not admissible but if they are construed as under works contract services under Entry 6(a) of Schedule II, then refund would be admissible.

Proposal:

- ❖ All LC members (except member from Karnataka) opined that construction of only such civil structures including a complex or building, which are intended for sale to a buyer along with land or undivided share of land, are covered under Entry 5(b) of Schedule II of CGST Act, 2017 and accordingly refund is not restricted in such cases as per the above mentioned Notification.
- ❖ LC member from Karnataka opined that construction of all kinds of civil structures, including bridges, falls under Entry 5(b) of Schedule II of CGST Act, 2017 and accordingly, refund should not be admissible in respect of construction of bridges.
- ❖ Matter placed before the Council for deliberation.

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Law Committee Recommendations relating to Compliance and Administrative measures under GST

Agenda 3(i): Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals

[Vol. I - Pg. 243-245]

Issue:

- ❖ Vide the Finance Act, 2023, amendments to section 109 and 110 of the CGST Act, 2017 were carried out and the same were notified vide notification No. 28/2023-Central Tax dated 31st July, 2023.
- ❖ In response to a request for nominations for the Search-cum-Selection Committee (ScSC) for appointment of Judicial Members and Technical Member (Centre) of GSTAT, the registrar of Supreme Court of India emphasized that certain provisions of the CGST Act, 2017 relating to GSTAT need to be aligned with the Tribunal Reforms Act, 2021.

Proposal

- ❖ **L.C recommended the following:**
 - To make **an amendment to section 110** of the CGST Act, 2017 :
 - ✓ to insert provision relating to eligibility of an Advocate with a standing of 10 years at the Bar with substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court for the appointment as judicial member
 - ✓ **Minimum age** for appointment of member or president of Tribunal to be specified as **50 years**;
 - ✓ Tenure of president and members to be upto a **maximum age of 70 years and 67 years** respectively.
- **This would help in aligning the provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021.**

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Agenda 3(iv): Law amendment with respect to ISD as recommended by the GST Council in its 50th meeting

[Vol 1- Pg. 263-267]

Issue:

- ❖ GST Council in its 50th meeting recommended that ISD (Input Service Distributor) procedure, as laid down in Section 20 of the CGST Act, 2017 read with rule 39 of CGST Rules, 2017 may be made mandatory prospectively for distribution of ITC in respect of input services procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs.
- ❖ Further, ITC on account of input services received from a third party, where such input services are liable to tax on reverse charge basis, should also be required to be distributed through ISD route. The Council authorized Law Committee (LC) to make requisite law amendments.

Proposal:

❖ LC has recommended:

- **amendment in definition of "input service distributor" under clause (61) of section 2 of CGST Act** to define it as such office of supplier of goods or services or both which receives tax invoices including invoices in respect of services liable to tax under reverse charge basis as per sub-sections (3) or (4) of Section 9, for or on behalf of a distinct person or distinct persons, as specified in section 25 and who is liable to distribute the input tax credit in respect of such invoices in terms of section 20.
- **amendment in section 20 of CGST Act**, to explicitly mandate distribution of the common credit including with credit pertaining to common input services which are liable to tax on reverse charge basis.
- **substitution of provisions of rule 39 of the CGST Rules** by incorporating methodology for distribution of credit in rule 39.

Agenda 3(viii): Amendment in CGST Rules and GST/PCT Form(s) (1/5):

[Vol 1- Pg. 289-302]

Issue:

(i) Incorporation of 'One Person Company' in FORM GST REG 01 i.e. Application for Registration

- While applying for Registration, an applicant is required to select one of the categories mentioned in 'Constitution of Business' from dropdown in Part B of FORM GST REG-01 i.e. Application for Registration.
- In the existing system, it is mandatory for applicant to update minimum two Partners/Promoters, if he selects any of the categories of "Constitution of Business". In case where an applicant tries to proceed with less than two Promoters and Partners, an error message is being displayed on the portal and he is not able to submit the application for registration.
- The option of choosing 'One Person Company' is not available among different categories of 'Constitution of Business' in notified FORM REG-01 and hence there is a need to make this option available in the FORM and on GST portal as well.

Proposal:

- ❖ Law Committee recommended to **incorporate 'One Person Company' as a Constitution of Business in Part-B of FORM GST REG-01** the applicant to fill only the details of the single member or owner and to submit the application successfully on system.

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Agenda 3(viii): Amendment in CGST Rules and GST/PCT Form(s) (2/5)

[Vol 1- Pg. 289-302]

Issue: Application for Enrolment as Goods and Services Tax Practitioner-Amendment in Form GST PCT-01

- Rule 83(1) of the CGST Rules, 2017 stipulates certain conditions for enrolment as Goods and Services Tax practitioner some of which are not available in the notified FORM GST PCT-01 and on the portal.
- Hence, necessary changes mentioned below are required to be made on the portal as well as in Part-B of Form GST PCT-01 in line with the rules.
 - Certificate of Practice (COP) is not required for CA/ICWA/CS as per the rules.
 - Option related to Graduate or Post Graduate in Law and Higher Auditing is not available in notified form and existing implementation
 - Option related to any other examination notified by Government is also not there.
 - Deleting the option of "Advocate" as it is not aligned with the existing rules.

Proposal:

- ❖ Law Committee recommended to **amend the S. No. 4 of Part-B of Form GST PCT-01 in line with rule 83(1)** of the CGST Rules.

Agenda 3(viii): Amendment in CGST Rules and GST/PCT Form(s) (3/5)

[Vol 1- Pg. 289-302]

Issue: Application for cancellation of TCS and TDS registration- Enhancement in Form GST REG-08 format for having options for cancellation of registration against the request made by the TDS and TCS registered persons

- Notification no. 26/2022-CT dated 26.12.2022 amended rule 12(3) of the CGST Rules to provide for facility to TDS and TCS registered person for cancellation of their registration on their request.
- Presently, the tax officers are issuing Order of cancellation of Registration as Tax Deductor at Source or Tax Collector at Source in FORM GST REG-08 for suo-moto cancellation of registration alone as there is no separate format for issuing order of cancellation of registration for those persons against self-cancellation application.
- Hence, there is a need to amend FORM GST REG-08 to specifically provide for cancellation of registration against the request made by the TDS and TCS registered persons and also to rephrase and re-align the reasons for cancellation in FORM GST REG-08 on the lines of those notified in respect of FORM GST REG-19 vide CGST (5th Amendment) Rules, 2022 for better clarity.

Proposal:

- ❖ Law Committee recommended to **substitute FORM GST REG-08** to provide for cancellation of registration against the request made by the TDS and TCS registered persons and to rephrase and re-align the reasons for cancellation in FORM GST REG-08 on the lines of those notified in respect of FORM GST REG-19.

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Agenda 3(viii): Amendment in CGST Rules and GST/PCT Form(s) (4/5)

[Vol 1- Pg. 289-302]

Issue: Amendment in FORM GSTR-8 to include late fee

- Section 47 of the CGST Act has been inter alia amended vide Finance Act, 2022 which envisages that the late fee on delayed furnishing of return in FORM GSTR-8 under section 52 of the CGST Act, 2017 by e-commerce operators, should also be levied from the date of implementation of the aforesaid amendment.
- Since, existing FORM GSTR-8 does not contain late fee table, certain changes were proposed by GSTN in the said Form.

Proposal:

- ❖ Law Committee recommended to **make changes in FORM GSTR-08** :
 - ❖ By substituting new Table 7 on "Interest, late fee payable and paid" in place of existing Table 6 and Table 7 to include interest on delayed submission of returns by tax payers under section 52 of the CGST Act.
 - ❖ By inserting column for late fee as well in Table 9 on Debit entries in cash ledger for TCS, interest and late fee payment.

Agenda 3(viii): Amendment in CGST Rules and GST/PCT Form(s) (5/5)


[Vol 1- Pg. 297-302]

Issue: Amendment in rule 142 (3) of the CGST Rules with respect to FORM GST DRC-05

- FORM GST DRC-05 uses the word intimation to denote the format in which the proper officer intimates the taxpayer regarding the conclusion of proceedings initiated against him. However, rule 142 (3) of the CGST Rules states that "...and the proper officer shall issue an **order** in FORM GST DRC-05 concluding the proceedings in respect of the said notice." i.e. the word used in rule 142(3) is 'order' and not 'intimation'. This created an anomaly as the intention behind FORM GST DRC-05 was to intimate the taxpayer about the proceedings and not to issue an order which is appealable.

Proposal:

- ❖ Law Committee recommended that rule 142 (3) may be amended so that words "intimation" shall be used instead of "order" with respect to FORM GST DRC-05.

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Other Proposals pertaining to Law and Procedures

Agenda 9: Amendment in Notification 1/2023-Integrated Tax to include supplies to SEZ units/ developers under IGST route

[Addendum to Vol 2- Pg. 01-03]

Issue:

- Vide Notification 01/2023-Integrated Tax dated 31.07.2023, all goods and services (except those specified in Table of the notification) were notified as class of goods or services which can be exported on payment of IGST under IGST route. This notification is effective from 01.10.2023.
- As supplies to SEZ unit/ developer are zero rated supplies but not considered as exports, the supplies to a SEZ developer or a SEZ unit for authorized operations on payment of integrated tax have not been covered in the said Notification for payment of IGST and subsequent refund of the same, meaning that only LUT route is available for such supplies to SEZ unit/ developer.
- This was not the intention of the Council as well as GoM on capacity based taxation, while recommending the issuance of said Notification.

Proposal: To amend Notification No. 1/2023-Integrated Tax dated 31.07.2023 w.e.f. 01.10.2023 by including all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as class of persons who may make supply of goods or services to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid.

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Agenda 9: Amendment in Notification 1/2023-Integrated Tax to include supplies to SEZ units/ developers under IGST route

[Addendum to Vol 2- Pg. 01-03]

Proposed Amendment in Notification 1/2023-Integrated Tax dated 31.07.2023

"In exercise of the powers conferred by sub-section (4) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereafter referred to as the "said Act"), the Central Government on the recommendations of the Council, hereby notifies

- (i) all goods or services (except the goods specified in column (3) of the TABLE below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and*
- (ii) all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as the class of persons who may make supply of goods or services to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid."*



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52nd GST Council Meeting

Agenda Item 4

Recommendations of Fitment Committee
on
Goods and Services

7th October, 2023

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

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9/11

Goods

• Total 12 issues examined

- Recommendations for making **changes** in GST rates/ issuing clarifications- 4
[Vol. I-Agenda Item 4(a), Annexure-I :pages 310 to 314 ; Volume II-Agenda 4 (i) -pages 8-9]
- Recommendations for making **no change** - 6 [Vol. I, Agenda Item 4, Annexure-II :pages 315 to 319]
- Issues **deferred** for further examination - 2 [Vol. I, Agenda Item 4, Annexure-III :pages 320 to 323]
- Issue **for information** of GST Council -1 [Vol. I, Agenda Item 4, Annexure-III :pages 311 to 313]

Services

• Total 24 issues examined

- Recommendations for making **changes** in GST rates/ issuing clarifications- 10
[Vol. I, Agenda Item 4, Annexure-IV :pages 324 to 339]
[Vol. II, Agenda Item 4 (Part-II)(ii) :pages 10 to 15]
- Recommendations for making **no change** - 5 [Vol. I, Agenda Item 4, Annexure-V :pages 340 to 350]
- Issues **deferred** for further examination - 9 [Vol. I, Agenda Item 4, Annexure-VI :pages 351 to 364]
[Vol. II, Agenda Item 4 (Part-II)(ii) :pages 10, 15 to 19]

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Goods-Changes Recommended:

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S. No. 1 Vol-I: Page No. 310	<ul style="list-style-type: none"> ➤ Reduction in GST rate on food preparation of millet flour, in powder form, containing at least 70% millets by weight (HS 1901) from 18% to- <ul style="list-style-type: none"> a. 0% if sold in other than pre-packaged and labelled form b. 12% if sold in pre-packaged and labelled form ➤ Since there was no ambiguity in the past, there appears no merit in regularising the issue for past period. 	No objection
4(a) (Annexure-I) S. No. 2 Vol-I: Page Nos. 310-311	<ul style="list-style-type: none"> ➤ Update List 34A & 34B of Notification No. 50/2017 – Customs as per revised appendix 4B issued vide DGFT Public Notice dated 18.08.2023 ➤ seek general approval from GST Council to update the lists as and when Appendix 4B is amended by DGFT and thereafter placing before Council for information as the changes are technical in nature. 	No objection

Goods-Changes Recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S. No. 4 Vol-I: Page Nos. 313-314	<ul style="list-style-type: none"> ➤ Clarification may be issued that imitation zari thread or yarn made out of metallised polyester film/ plastic film falling under HS 5605 are covered by the entry for imitation zari thread or yarn attracting 5% GST rate. ➤ No refund will be permitted on polyester film (metallised) /plastic film on account of inversion. 	No objection

CHAIRMAN'S
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Goods-**No change recommended**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) S. No. 1 Vol-I: Page Nos. 315-316	<ul style="list-style-type: none"> ➤ Concrete mixers are classified under HS Code 8474 and attract 18% GST rate. Boom pumps i.e., concrete pumps are classified under HS Code 8413 and attract 18% GST rate. ➤ Concrete mixer lorries are classified under HS Code 8705 (SPV) and attract 18% GST rate. Body parts of motor vehicle (8707) attract 28%. ➤ Entries are clear, specific clarification may not be required. Status quo may be maintained 	No objection
4(b) (Annexure-II) S. No. 2 Vol-I: Page Nos. 316-317	<ul style="list-style-type: none"> ➤ Concessional rate of 12 % has been provided to various renewable energy devices and parts for their manufacture ➤ Concessional GST rate would not apply in case parts are purchased for replacing the parts on existing devices. ➤ Request is to clarify that GST rate on the spare parts of renewable energy devices is 12%, irrespective of the end-use. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	<ul style="list-style-type: none"> • Punjab suggested that to avoid end use exemptions, the benefit of concessional rate may be extended to supply of parts for use other than manufacturing of such devices as well. • It was opined that TRU may examine in totality with all other end use exemptions entries

Goods-**No change recommended**

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (b) (Annexure-II) S.No. 3 Vol-I: Page No. 317	<ul style="list-style-type: none"> ➤ Request is for reduction in GST rate on Electric Vehicle Battery from 18% to 5%. ➤ Lithium ion batteries have multiple uses i.e. cellular mobile phones, portable electronics, electric vehicles etc. Accordingly, Status quo may be maintained. 	No objection
4 (b) (Annexure-II) S.No. 4 Vol-I: Page Nos 317-18	<ul style="list-style-type: none"> ➤ Request is to seek clarification regarding the scope of sugar boiled confectionery. ➤ Sugar boiled confectionary is distinguishable from sugar confectionary. No clarification is required in view of the existing BIS/FSSAI standards. 	No objection

CHAIRMAN'S INITIALS



Goods-**No change recommended**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) <u>S.No. 5</u> <u>Vol-I: Page No. 318</u>	<ul style="list-style-type: none"> ➤ Request is to <ul style="list-style-type: none"> ➤ Exempt cess payable by Canteen Store Depots (CSDs) on outward supply of aerated beverages and energy drinks OR ➤ Collect the applicable cess at the Depot level for supplies made by Unit Run Canteens (URCs) ➤ It was decided in the 15th GST Council meeting that no concession is to be given from levy of Compensation Cess to URCs. ➤ No change in rate is recommended. ➤ Regarding the suggestion to collect applicable cess at the Depot level for supplies made by URCs, the matter may be referred to the Law Committee for consideration. 	No objection

Goods-**No change recommended**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) <u>S.No. 6</u> <u>Vol-I: Page Nos. 318-319</u>	<ul style="list-style-type: none"> ➤ Request is for uniform additional compensation cess on cigarettes/ compensation cess on bidis/ additional compensation cess on smokeless tobacco products/ or lower compensation cess on cigarettes sticks up to 70 mm. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection


CHAIRMAN'S
INITIALS


Goods- **Deferred**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(c) (Annexure-III) S.No. 1 Vol-I: Page No. 320	<ul style="list-style-type: none"> ➤ Request is to clarify that khari and crème roll are covered under "similar toasted products" and attract 5% GST rate ➤ The issue was examined in 47th, 48th & 50th GST Council meetings and it was observed that further details regarding the nature of product, process of preparation is required before making any suggestions. ➤ Maharashtra suggested to get the same examined by Food Research Institutes. ➤ The issue may be deferred. 	No objection

Goods- **Deferred**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(c) (Annexure-III) S.No. 2 Vol-I: Page Nos. 320-323	<ul style="list-style-type: none"> ➤ GST Council in its 47th meeting referred the issue of levy of GST on steel scrap on RCM basis to Fitment Committee. ➤ State of Karnataka: <ul style="list-style-type: none"> ❖ Such proposal may not be feasible as it breaks the ITC chain, leads to cascading of taxes and breakage of audit trail. ❖ Suggested measures such as introduction of trace and track mechanism, better registration procedures, registration of e-way bills if that commodity is registered to be supplied, ITC only if invoice is registered etc. ➤ State of Punjab: <ul style="list-style-type: none"> ❖ Tax iron and scrap on RCM and exempt supply of scrap in the hands of traders ❖ Make e-way bill mandatory for all transactions in scrap irrespective of value. ➤ Fitment Committee recommended to defer the issue to create a Committee of officers to study the issue holistically and to come up with workable solutions. ➤ Sub-committee has submitted its report on 02.10.2023. The issue may be deferred pending examination of the report of committee. 	No objection

CHAIRMAN'S
INITIALS


Carunia Seelavathi Vs UOI (High Court) For Information of the Council

Agenda No.	Issue/Proposal	Relevant extract of the order
4(a) (Annexure-I) S. No. 3 Vol-I: Page Nos. 311-313	<ul style="list-style-type: none"> ➤ Presently, concessional GST rate of 18% is available only to orthopaedic physical disabled person ➤ Hon'ble High Court passed a judgement dated 26.06.2023 asking authorities to issue necessary orders for providing GST concession to the petitioner (visually impaired person). ➤ Appeal with stay application has been filed before Madurai bench ➤ Fitment committee recommended to place the order of Hon'ble High Court before the Council for information. 	<i>"Considering the recommendation of the Commission which is a commission specifically established for the disabled and taking into consideration the fact that today the visually challenged persons are having more opportunities of employment in the government sector and their commuting to the place of work becomes challenging, this court is of the opinion that the exemption has to be granted to the petitioner and accordingly, the writ petitions are allowed. The authority concerned shall ensure that necessary orders exempting the petitioner from the Motor Vehicle's Tax as well as GST are passed within a period of four weeks from the date of receipt of a undertaking letter by the petitioner."</i>

Goods-Changes Recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (Part-II) (i) Vol-II: Page Nos 8-9	<ul style="list-style-type: none"> a. To place before Hon'ble Supreme Court that the GST Council has no intent to subject Extra-Neutral Alcohol (ENA) for use in manufacture of alcoholic liquors for human consumption. b. To make suitable amendment in law to exclude ENA supplied for manufacture of alcoholic liquors for human consumption from the ambit of GST c. To reduce GST on Molasses from 28% to 5%. d. To notify rate of 18% for new tariff line created for 'ENA for industrial use' (HS 22071012). 	<ul style="list-style-type: none"> ▪ No objection on proposed agenda. ▪ However, for past period, JS (TRU) and committee of officers from following states will study the implication : <ul style="list-style-type: none"> (i) Karnataka (ii) Uttar Pradesh (iii) West Bengal (iv) Rajasthan (v) Maharashtra (vi) Madhya Pradesh (vii) Punjab (viii) Andhra Pradesh <p>JS(TRU) will convene the meeting</p>

CHAIRMAN'S
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Tabled Agenda

Agenda No.	Issue/Proposal	Status after officers' meeting
4(c) (Annexure -III) S. No. 2 Vol-I: Page Nos. 320-323	<ul style="list-style-type: none"> ➤ All foreign going vessels upon conversion to Coastal run/coastal trade are required to file Bill of entry/IGM at the time of its conversion to coastal run and pay applicable duties on the vessel, stores and fuel. In the instant case, the Cruise ship Costa Serena will have to convert to coastal run for operating the cruises in coastal waters (Mumbai - Goa- Mumbai and Mumbai-Kochi-Lakshadweep- Mumbai) for their voyage from 02.11.2023 to 10.01.2024 ➤ Further, the cruise ship operator does not intend to enter into a lease arrangement and consequently, they will be liable to pay IGST of 5% on the value of the vessel on conversion to coastal. ➤ In the pre-GST regime, they were exempted from CVD levied in lieu of central excise duty. ➤ The proposed operation of cruise ship Costa Serena is beyond the scope of the definition of "foreign going vessel". Therefore acceding to the request is not feasible as the same would require amendment of the Act. ➤ The only option that can be considered is providing exemption from 5% IGST levy for foreign flag foreign going vessels being operated by an entity not registered under GST in India when it converts to coastal run subject to the condition that it reconverts to foreign going vessel with a period of 6 months. 	No objection

Services- Change recommended :

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 1(a) Vol-I: Page No. 324-326	➤ Request is to notify a mechanism for utilization of ITC in cases where passenger transportation services by AC buses are supplied through an e-commerce operator (ECO) and to shift the onus of discharging GST on registered bus operators providing passenger transportation service through ECOs.	No objection
4(d) (Annexure-IV) S.No. 1(b) Vol-I: Page No. 324-326	<ul style="list-style-type: none"> ➤ To arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, Companies supplying passenger transport services by a motor vehicle may be excluded from the purview of section 9(5) of CGST Act, 2017. ➤ It may be clarified that input services in same line of business include transport of passengers or renting of motor vehicle with operator and to limit ITC on services in the same line of business to 5%. 	

CHAIRMAN'S INITIALS



Services- Change recommended :

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 2 Vol-I: Page No. 326-327	<ul style="list-style-type: none"> ➤ Request to clarify whether GST is applicable on reimbursement of electricity charges received by the Real estate companies, malls, airport operators etc. from their lessees/occupants . ➤ It may be clarified that whenever electricity is being supplied with renting of immovable property and/or maintenance of premises etc. it forms a part of composite supply and taxes as applicable will be charged . In such cases even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise etc. would be applicable. ➤ Where real estate owner supplies electricity as pure agent, it will not form part of value of his supply. ➤ Further, where they charge for electricity on actual basis, they will be deemed to be acting as pure agent for this supply. 	No objection

Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 3 Vol-I: Page No. 327-330	<ul style="list-style-type: none"> ➤ Request is to exempt services provided by District Mineral Foundations from GST. ➤ It may be clarified that DMFT is a governmental authority and thus eligible for the same exemptions as available to any other Governmental Authority. 	No objection
4(d) (Annexure-IV) S.No. 4 Vol-I: Page No. 330-332	<ul style="list-style-type: none"> ➤ Request is to clarify whether services by way of jobwork for conversion of barley into malt attracts GST at 5% prescribed for "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff" or at the rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption". ➤ It may be clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) "which covers job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST. 	No objection

CHAIRMAN'S
INITIALS

[Signature]

Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 5 Vol-I: Page No. 332-333	<ul style="list-style-type: none"> ➤ Request to specify a positive list of services under Sr. No. 3 & 3A of notification No. 12/2017-Central Tax (Rate) which exempts pure and composite services provided to Central/State/UT governments and local authorities in relation to any function entrusted to Panchayat/ Municipality under Article 243G and 243W of the Constitution of India. ➤ Existing entries at Sl. No. 3 and 3A of notification No. 12/2017-CTR dated 28.06.2017 may be retained. ➤ A new entry may be created in the notification No. 12/2017-CTR dated 28.06.2017 to exempt following five services supplied to Governmental Authority: (1) Water Supply, (2) Public health, (3) Sanitation Conservancy, (4) Solid Waste Management, and (5) Slum improvement and upgradation. 	No objection

Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 6 Vol-I: Page No. 333-335	<ul style="list-style-type: none"> ➤ Request is to bring supplies made by Indian Railways under forward charge mechanism. Currently, only transport of passenger service is charged on forward charge. ➤ All goods and services supplied by Indian Railways may be brought under forward charge by amending Notification no 13/2017-CTR. ➤ Consequently Indian Railways may be excluded from the exemptions given to services supplied by Government to individuals, unregistered business entities or to Central, State Governments, local authorities by amending Notification no 12/2017-CTR. 	No objection

CHAIRMAN'S
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Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (d) (Annexure-IV) S.No. 7 Vol-I: Page No. 335-337	<ul style="list-style-type: none"> ➤ Clarification requested by CAMPCO on entry 54(g) of 12/2017-CTR(R) dated 28.06.2017 with regard to the scope of exemption for commission agent in facilitating the sale of agricultural produce. ➤ CAMPCO may be advised to approach Authority for Advance Ruling. 	No objection
4(d) (Annexure-IV) S.No. 8 Vol-I: Page No. 337-338	<ul style="list-style-type: none"> ➤ Request is to clarify applicability of GST on Horticulture Contracts supplied to CPWD. ➤ It may be clarified that supply of pure services and/or composite supply by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) to CPWD are exempt from GST under Sr. No. 3 and 3A of the notification No.12/2-17-CTR dated 28.06.2017. 	No objection

Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (d) (Annexure-IV) S.No. 9 Vol-I: Page No. 338-339	<ul style="list-style-type: none"> ➤ Entry at Sr. No. 34(iv) of the services rate notification No. 11/2017-CTR dated 28.06.2017 which specifies 28% GST for "services provided by a race club by way of totalizator or a license to bookmaker in such club" may be rationalized as "services provided by a race club by way of licensing a bookmaker in such club" as supply by a race club by way of a totalizator is supply of actionable claims and not services. ➤ Further entry at Sr. No. 34(v) of the services rate notification No. 11/2017- CTR dated 28.06.2017 which specifies GST rate of 28% on "gambling" may be omitted as gambling is already included under Sl. No. 227A of the goods rate schedule under "Specified Actionable Claim". ➤ In addition to above, entry 999692 and 999694 may be deleted from the scheme of classification of services (Annexure to the notification No. 11/2017-CTR dated 28.06.2017). 	No objection

CHAIRMAN'S
INITIALS

Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 10 Vol-II Page No. 10-15	<ul style="list-style-type: none"> ➤ Request is to clarify whether service by way of hostel accommodation, service apartments /hotels booked for longer period is a service of renting of residential dwelling for use as residence and exempted as per entry no. 12 of the notification No. 12/2017-CT (Rate) dated 28/06/2017 and for GST exemption on hostels for poor and middle-class students run by charitable trusts. ➤ Chapter heading 9963 may be deleted from Column No. 2 in the notification No. 12/2017- CT(R). ➤ Further, an Explanation may be inserted in Sl. No. 12 of Notification No. 12/2017-CT(R) dated 28.06.2017 stating that nothing contained in this entry shall apply to: <ul style="list-style-type: none"> (i) accommodation services for students in student residences; and (ii) accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like. 	No objection

Services-No change

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (e) (Annexure-V) S.No. 1 Vol-I Page No. 340-341	<ul style="list-style-type: none"> ➤ Request is to apply uniform GST rate of 5% on Business Correspondent services provided in both rural/urban areas. ➤ Presently, 18% GST is applicable on the entire chain of banking services irrespective of the fact that services are being offered by the banking company or their banking correspondent. ➤ Specific exemption for services provided by BC/BF to banking companies in respect of rural area branches has been given in line with the objectives of financial inclusion. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection
4(e) (Annexure-V) S.No. 2 Vol-I Page No. 341-342	<ul style="list-style-type: none"> ➤ Request is to bring renting of residential dwellings by registered persons to registered persons under Forward Charge Mechanism. ➤ No real life examples or difficulties in implementation of the said notification were brought to notice. ➤ Fitment Committee recommended to maintain <i>status quo</i>. 	No objection

CHAIRMAN'S INITIALS



Services-**No change recommended**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(c) (Annexure-V) S.No. 3 Vol-I, Page No. 342-344	<ul style="list-style-type: none"> ➤ To clarify that 'sale of land' at Entry No. 5 of Schedule III of the CGST Act includes assignment of leasehold rights in such land. ➤ Sale of land and lease of land are not the same thing. While sale of land results in transfer of title to land along with all the benefits arising out of it, the lease of land does not result in transfer of title to that land or all rights/benefits arising out of it. ➤ Fitment Committee recommended to maintain status quo. 	No objection
4(c) (Annexure-V) S.No. 4 Vol-I, Page No. 344	<ul style="list-style-type: none"> ➤ Request is for exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST. ➤ Exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST will encourage hoarding of industrial plots for the purpose of re-sale and defeat the objective of promoting and setting up of industrial units. ➤ Fitment Committee recommended to maintain status quo. ➤ On a related issue of whether ITC of lease of industrial plots is available or blocked by Section 17(5) of CGST Act, 2017, the Fitment Committee recommended to refer the matter to the Law Committee. 	No objection

Services-**No change recommended :**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(e) (Annexure-V) S.No. 5 Vol-I, Page No. 345-346	<ul style="list-style-type: none"> ➤ Request from State of Nagaland to keep the rate of GST @ 12% on works contract services which commenced prior to 18.07.2022. ➤ Similar issue was examined and not acceded to by the GST Council in 47th meeting of GST Council held on 28-29 June, 2022. ➤ If 12% rate is continued for old contracts, multiple rates of 12% and 18% would be there for many years in future leading to complex rate structure. ➤ Fitment Committee recommended to maintain status quo. 	No objection

CHAIRMAN'S
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Services- **Deferred Issue**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 5 Vol-I, Page No. 355-357	<ul style="list-style-type: none"> ➤ Request to exempt Services provided by Central Government or State Government or Governmental Authority or local authority by way of granting long term lease (exceeding 30 years) of land of industrial plots for development for infrastructure for financial business. ➤ The matter was deferred in the 43rd GST Council held on 28th May, 2021. ➤ The matter was examined in the Fitment Committee and it was recommended that the matter may be referred to the GoM on real estate for examination, as it is closely related to the issues already before the GoM. ➤ Fitment Committee recommended that the matter may be deferred. 	No objection
4(f) (Annexure-VI) S.No. 6 Vol-I, Page No. 357	<ul style="list-style-type: none"> ➤ Request to clarify the nature and taxability of various supplies in relation to crypto eco-system ➤ GST Council in its 47th meeting held on 28-29 June 2022 and in its 48th meeting held on 17 December 2022, has deferred the issues regarding the nature and taxability of various supplies in relation to the crypto eco-system. ➤ It was decided that Haryana and Karnataka shall study all aspects and submit a paper before the Fitment Committee in due course. Both Haryana and Karnataka expressed their inability to submit the paper. ➤ The matter was deliberated in the Fitment Committee. It was agreed that a study should be got done from some technical institutions. ➤ Matter may be deferred. 	No objection

Services- **Deferred Issue**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 7 Vol-I, Page No. 357-359	<ul style="list-style-type: none"> ➤ Harmonisation of GST Rate Schedule on Services and the Classification of Services adopted for GST ➤ Currently the GST rate schedule for services does not mention the classification of services at the 6-digit level. The sub-categorization of services beyond the 4-digit level has been carried out only for those services, on which a rate lower or higher than the standard rate of 18% was to be prescribed. ➤ This data – the value of services, GST collected, GST paid in cash and through credit – is very important for policy formulation. ➤ Fitment Committee recommended that the draft revised rate schedule of services at 6-digit level of classification may be circulated to all states for comments, after which the same may be examined by Fitment Committee/sub-committee. ➤ The same shall then be placed before the GST Council for approval. Once approved, it shall be placed in the public domain and implemented after incorporating any changes required therein in view of the feedback received and after a drop-down mechanism for selecting 6-digit classification of services is made available in GSTN portal. ➤ May be deferred. 	No objection

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Services- **Deferred Issue**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 8 Vol-I Page No. 359-364	<ul style="list-style-type: none"> ➤ To clarify whether GST is applicable on charges/ fees like FSI paid by builders to local authorities under RCM. ➤ During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination. ➤ The Fitment Committee recommended that the issue may be deferred. 	No objection
4(f) (Annexure-VI) S.No.9 Vol-II Page No. 10	<ul style="list-style-type: none"> ➤ Request to declare Delhi Development Authority as a Local Authority for the purposes of GST. ➤ As per section 2(1)(d) of National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, DDA is "a local authority" established under the Delhi Development Act 1957. ➤ Section 3(31) of General Clauses Act 1897 defines a local authority as "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund. Supreme Court in the R.C Jain case (1981 AIR 951) has held DDA to be a Local Authority. ➤ During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination and may be deferred. 	No objection

Services- **Deferred Issue**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 10 Vol:II Page No. 15-18	<ul style="list-style-type: none"> ➤ Request to clarify whether GST is leviable on the incentive amount that is shared by acquirer bank with other stakeholders in the digital payment ecosystem. ➤ The issue was discussed in the Fitment Committee. Karnataka stated that it shall send a note on the issue and the matter may be deferred. 	No objection
4(f) (Annexure-VI) S.No. 11 Vol:II Page No. 18-19	<ul style="list-style-type: none"> ➤ Request to clarify regarding ascertaining value of land for deciding value of construction services in case of sale of commercial / residential apartments. ➤ The issue was discussed in the Fitment Committee and since the matter required detailed examination, the matter may be deferred. 	No objection

CHAIRMAN'S
INITIALS


Services- **Deferred Issue**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(e) (Annexure-V) S.No. 6 Vol-I: Page No. 346-348	<ul style="list-style-type: none"> ➤ Request to clarify whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the RERA Act, 2016. ➤ RERA has claimed that their statutory function of regulating the real estate development and construction of the building entrusted to the RERA falls squarely under Entry No.1 and 2 of the Twelfth Schedule of the Indian constitution. ➤ The issue was discussed in the Fitment Committee and since the matter required detailed examination, the matter may be deferred. 	No objection

Services- **Deferred Issue**

Agenda No.	Issue/Proposal	Status after officers' meeting
4(e) (Annexure-V) S.No. 7 Vol-I: Page No. 348-350	<ul style="list-style-type: none"> ➤ Request is to levy GST on renting of commercial property on RCM basis ➤ In case of renting of commercial property, only registered person is subject to payment of tax. However, where the person providing service of renting of commercial property is unregistered (on account of threshold for registration) no GST is applicable. ➤ This is dissimilar to renting of residential dwelling to a registered person which has been brought under reverse charge. ➤ The issue was discussed in the Fitment Committee and since the matter required detailed examination, the matter may be deferred. 	No objection

CHAIRMAN'S
INITIALS

[Signature]

THANK YOU

Goods

• Total 12 issues examined

- Recommendations for making **changes** in GST rates/ issuing clarifications- 4

[Vol. I-Agenda Item 4(a), Annexure-I, pages 310 to 314, Volume -II-Agenda 4 (i)-pages 8-9]

- Recommendations for making **no change** - 6

[Vol. I, Agenda Item 4, Annexure-II, pages 315 to 319]

- Issues **deferred** for further examination - 2

[Vol. I, Agenda Item 4, Annexure-III, pages 320 to 323]

- Issue **for information** of GST Council -1

[Vol. I, Agenda Item 4, Annexure-III, pages 311 to 313]

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7/1

Services

- Total **24** issues examined

- Recommendations for making **changes** in GST rates/ issuing clarifications- **10**

[Vol. I, Agenda Item 4, Annexure-IV :pages 324 to 339]

[Vol. II, Agenda Item 4 (part II)(ii): pages 10 to 15]

- Recommendations for making **no change** - **5**

[Vol. I, Agenda Item 4, Annexure-V :pages 340 to 350]

- Issues **deferred** for further examination – **9**

[Vol. I, Agenda Item 4, Annexure-VI :pages 351 to 364 & Vol. II, Agenda Item 4 (ii), pages 10-19]

Recommendations of the Fitment Committee:

Goods

CHAIRMAN'S
INITIALS

[Signature]

Agenda 4(a) (Annexure-I): Changes in GST rates: issuing clarification (pages-310-314)1. Food preparation of millet flour in powder form, containing at least 70% millets: (page 310)

- Currently, food preparations of flour classified under CTH 1901 attract 18% GST.
- In the 49th & 50th GST Council Meetings, Council deferred the proposal for further examination
- Representation received:
 - to exempt/reduce rate for the preparation of flour of millets
- Fitment Committee recommendations:-
 - GST rate on food preparation of millet flour, in powder form, containing at least 70% millets by weight (CTH 1901), sold in other than pre-packaged and labelled form may be reduced to Nil and if sold in pre-packaged and labelled form, may be reduced to 12%.
 - Considering that there was no ambiguity in law or in practice regarding prepared flour preparations there appears no merit in regularising the issue for past period.

Agenda 4(a) (Annexure-I)2. Gold and Silver imported by specified banks: (pages 310-311)

- IGST exemption is available on imports of gold, silver or platinum by specified banks & other entities mentioned in list 34A, 34B & 34C of Sr. No. 359A of Notification No. 50/2017 – Customs dated 30.06.2017 in line with Appendix 4B of HBP, FTP, 2023.
- GST Council, in its 50th meeting, recommended to update the said list in accordance with the Appendix 4B of HBP, FTP, 2023, after confirmation by DGFT and DGEP. Accordingly, the list of banks and other entities have been updated.
- Representation received:
 - Karur Vysya Bank has requested to add its name in the said list in accordance with the DGFT public notice 28/2023 dated 18.08.2023
- Fitment Committee recommendations:
 - Update List 34A & 34B of Notification No. 50/2017 – Customs as per revised appendix 4B of HBP (FTP 2023) issued vide DGFT public notice 28/2023 dated 18.08.2023
 - Seek general approval from GST Council to update the lists as and when Appendix 4B is amended by DGFT and place the same for information of Council as the changes are technical in nature.

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Agenda 4(a) (Annexure-I)

3. Motor Vehicles (8703) purchased by Divyangjan.: (page 311-312)

- Presently, GST concessional rate of 18% for purchase of vehicles (HSN 8703) is available only to orthopaedic physical disabled persons.
- Hon'ble Madras High Court in writ petition by Ms. Carunia Seelavathi (visually impaired person) passed a judgement dated 26.06.23 asking authorities to issue necessary orders for providing GST concession to the petitioner, currently available to orthopedically disabled persons.
- Appeal with stay application has been filed before Madurai bench, against the said judgement mainly on the grounds that decision to provide exemption is to be determined by the GST Council and is a policy decision.
- The GST Council in its 47th Meeting deliberated on the issue and opined that the benefit/concession to Divyangjan on purchase of vehicle should be in the form of reimbursement of GST by the Department of Empowerment of Persons with Disabilities (DEPwD), considering that end use based GST rates creates distortion.
- **Fitment Committee recommendations:**
 - Fitment committee recommended to place the order of Hon'ble High Court before the Council for information and suitable recommendation.



Agenda 4(a) (Annexure-I)

4. Clarification on imitation Zari thread or yarn made out of polyester film (metallised) /plastic film: (pages 313-314)

- The GST Council in its 50th meeting had recommended reduction of GST rate to 5% on all imitation zari thread or yarn known by any name in trade parlance.
- **Explanatory notes** to HSN provides that heading 5605 also covers products consisting of a core of metal foil (generally of aluminium) or of a core of plastic film coated with metal dust, sandwiched by means of an adhesive between two layers of plastic film
- **Representation received:**
 - Clarify whether metal coated plastic film converted to metallised yarn & twisted with nylon, cotton, polyester or any other yarn to make imitation zari thread is covered under imitation zari thread or yarn notified at 5% or under the other metallised yarn category at 12%.
- **Fitment Committee recommendation:**
 - Clarification may be issued that the entry covering imitation zari with 5% GST covers zari thread or yarn made from metal coated plastic film converted to metallised yarn & twisted or gimped with nylon, cotton, polyester or any other yarn.
 - No refund may be permitted on polyester film (metallised) /plastic film on account of inversion.



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Agenda 4 (Part -II) (i)- Volume II

5. Taxation of ENA under GST: (page 8-9)

• Fitment Committee recommendation

1. To place before Hon'ble Supreme Court that the GST Council has no intent to subject ENA for use in manufacture of alcoholic liquors for human consumption.
2. To make suitable amendment in law to exclude ENA (both grain-based and molasses-based) from ambit of GST when supplied for manufacture of alcoholic liquors.
3. To reduce GST on Molasses from 28% to 5%.
4. To notify rate of 18% for new tariff line at 8 digit level created for ENA for industrial use (HS 22071012).



Tabled Agenda :

6. IGST on cruise ship for coastal run:

- Cruise ships (HSN 8901) attract Nil BCD vide Sl. No. 551 of notification No. 50/2017-Customs and IGST at a rate of 5% vide Sl. No. 246 of IGST notification No.2/2017-IT(Rate). However, all goods, vessels, ships imported under lease attract Nil IGST vide S. No. 557B of 50/2017-Customs.
- All foreign going vessels upon conversion to Coastal run/coastal trade are required to file Bill of entry/IGM at the time of its conversion to coastal run and pay applicable duties on the vessel, stores and fuel. In the instant case, the Cruise ship Costa Serena will have to convert to coastal run for operating the cruises in coastal waters (Mumbai -Goa- Mumbai and Mumbai-Kochi-Lakshadweep- Mumbai) for their voyage from **02.11.2023 to 10.01.2024**
- Further, the cruise ship operator does not intend to enter into a lease arrangement and consequently, they will be liable to pay IGST of 5% on conversion to coastal.
- In the pre-GST regime, they were exempted from CVD levied in lieu of central excise duty.

Representation :

- Min of Ports requested that the permission may be granted to Cruise Ship Costa Serena (foreign flag) to remain and sail as a foreign -run vessel and considered as conveyance during its coastal run in India.

Recommendations:

- The proposed operation of cruise ship Costa Serena is beyond the scope of the definition of foreign going vessel. Therefore acceding to the request is not feasible as the same would require amendment of the Act.
- The only option that can be considered is providing exemption from 5% IGST levy for foreign flag foreign going vessels being operated by an entity not registered under GST in India when it converts to coastal run subject to the condition that it reconverts to foreign going vessel with a period of 6 months.



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Agenda 4(b) (Annexure-II): Recommendations for **no change** (pages 315-319)

1. Concrete mixers, Self-loading concrete mixers (SLCM) and boom pumps: (pages 315-316)

S.No	Goods	HS Code	GST Rate
1	Concrete mixers	8474	18%
2	Boom pumps i.e., concrete pumps	8413	18%
3	Concrete mixer lorries	8705	18%
4	Body parts of motor vehicle	8707	28%

- Explanatory notes for HS code 8474 clearly mentions that concrete mixers permanently mounted on a railway wagon or a lorry chassis are, however, excluded from 8474 and will be covered under heading 86.04 or 87.05 respectively.
- Representation received:
 - To clarify that Concrete mixer, SLCM and boom pump supplied independently, or mounted on a chassis is not a body for motor vehicle and not to be classified under HSN 8707 (28%) and would be classified under Tariff Heading 8474 and 8413 respectively.
- Fitment Committee Recommendation:
 - Status quo may be maintained. Since the entries are clear, specific clarification may not be required.



Agenda 4(b) (Annexure-II)

2. Spare Parts of Renewable Energy Devices irrespective of the end use: (page 316-317)

- Presently, concessional rate of 12 % (wef 01.10.2021) has been provided to various renewable energy devices and parts **for their manufacture** based on the recommendations of 45th meeting. (Bio-gas plant; solar power generators; wind mills etc). Prior to 01.10.21, these goods attracted a concessional GST rate of 5%
- However, where these parts are supplied for replacing the parts on existing devices, the concessional GST rate would not apply as the parts are not being used in the manufacture. In such cases, the standard GST rate is applicable.
- Representation received:
 - To clarify that GST rate on the spare parts of renewable energy devices is 12%, irrespective of the end-use.
- Fitment Committee Recommendation:
 - Status quo may be maintained.



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Agenda 4(b) (Annexure-II)

3. Electric Vehicle Battery: (page 317)

- Lithium ion batteries attract a GST rate of 18% (S.N. 376 AA-Sch -III, Notification 1/2017-CTR), which is already lower than the 28% GST rate (S.N. 139, Sch -IV, Notfn 1/2017-CTR) charged on other electric accumulators/batteries falling under HSN 8507
- Representation received:
 - To reduce rate to 5%
- Fitment Committee Recommendation:
 - Lithium ion batteries have multiple uses i.e. cellular mobile phones, portable electronics, electric vehicles etc. Status quo may be maintained.



Agenda 4(b) (Annexure-II)

4. Sugar boiled Confectionary: (pages 317-18)

- Sugar boiled confectionary attract GST at the rate of 12% and Sugar confectionary attract GST at the rate of 18%.
- Sugar boiled confectionary refers to boiled sweets which has a dedicated 8-digit HS Code 1704 90 20.
- Representation received:
 - Issue clarification regarding the scope of 'Sugar Boiled Confectionery'.
- Fitment Committee Recommendation:
 - Sugar boiled confectionary is distinguishable from sugar confectionary. No clarification required in view of existing BIS/FSSAI standards.

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Agenda 4(b) (Annexure-II)

5. Aerated beverages and energy drinks: (page 318)

- Aerated beverages and energy drinks, falling under HS 2202 attract GST compensation cess @12%.
- Supply of goods, under any Chapter, by the Unit Run Canteens (URCs) to the authorized customers is fully exempt from GST based on recommendation of the GST Council in the 15th Meeting.
- However conscious policy decision taken that no concession is to be given on levy of Compensation Cess.
- Representation received:
 - Cess payable by CSD on outward supply of good may be fully exempted or
 - applicable cess may be collected at the Depot level for supplies made by URCs
- Fitment Committee Recommendation:
 - No change recommended in rate.
 - Suggestion of collection of applicable cess at the Depot level for supplies made by URCs may be referred to the Law Committee for consideration.



Agenda 4(b) (Annexure-II)

6. Tobacco products: (pages 318-319)

- In its 15th meeting, GST Council recommended 28% GST on bidis but decided not to levy any Compensation cess on bidis as it a household industry in certain parts of India.
- On the basis of the recommendation of the GST Council in its 49th and 50th meetings, the Compensation Cess rate levied on products such as pan masala, chewing tobacco with declared retail sale price has been linked to retail sale price and is leviable at a rate ranging from 8% to 69% of retail sale price.
- In the Union Budget 2023-24, the National Calamity Contingent Duty (NCCD) rate on specified cigarettes has been revised upwards by about 16 percent with effect from 02.02.2023. This change is expected to lead to increased collections of GST.

Representation received:

- Uniform additional compensation cess on cigarettes/ compensation cess on bidis/ additional compensation cess on smokeless tobacco products/ or lower compensation cess on cigarettes sticks up to 70 mm.
- Fitment Committee Recommendation:
 - Status quo may be maintained.



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Agenda 4(c) (Annexure-III): Issue deferred for further examination (pages-320 - 323)

1. Khari, Cream Rolls [Bakery products]: (pages 320)

- Currently, concessional GST rate of 5% is applicable on Rusks, toasted bread and other toasted products.
- Bakery products such as Pastry, Cake, Biscuits, Communion Wafers, etc. [other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products], attract GST rate of 18%
- The issue was examined in 47th, 48th & 50th GST Council Meetings and it was observed that further details regarding the nature of product, process of preparation is required before making any suggestions. Maharashtra suggested to get the same examined by Foods Research Institutes.
- **Representation received:**
 - Request is to clarify that Khari and crème roll are covered under "similar toasted products", and attracts 5% GST rate
- **Fitment Committee Recommendations:**
 - Deferred for in-depth study



Agenda 4(c) (Annexure-III)

2. Steel Scrap (page 320-323)

- Request to reduce GST rate from 18 % has not been accepted by GST Council in its 47th meeting. The only issue referred to Fitment committee for deliberations is regarding levy of GST **on RCM basis**.
- During deliberations in 47th meeting, member from Karnataka suggested for detailed study and member from Punjab suggested for deferment for want of detailed consultation.
- After consultation with stakeholders and industry, State of **Karnataka** suggested, inter alia that :
 - the proposal of levy of GST on reverse charge mechanism may not be feasible as the same breaks the chain of input tax credit and also leads to cascading of taxes and also breakage of audit trail.
 - to prevent the evasion and to create conducive business atmosphere, few measures were recommended such as: introduction of trace and track mechanism, better registration procedures, registration of e-way bills if that commodity is registered to be supplied, ITC only if invoice is registered etc.
- **Punjab** has *inter alia*, suggested:
 - to tax iron and scrap on RCM and exempt supply of scrap in the hands of traders
 - e-way bill should be mandatory for all transactions in scrap irrespective of value.
- **Fitment Committee Recommendations:**
 - **A Committee of officers was constituted** to study the issue holistically and to come up with workable solutions.
 - The Sub Committee has met on two occasion and has submitted its report on this 02.10.2023, will be examined in next fitment committee. The issue may be deferred pending examination of the report of the Committee .




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Recommendations of the Fitment Committee: Services

Agenda 4 (d) (Annexure-IV): Changes in GST rates/ issue clarification (pages 324-339)

1. (a) To notify a mechanism for utilization of ITC in cases where passenger transportation services by AC buses are supplied through an e-commerce operator (ECO).
 - (b) To shift the onus of discharging GST on registered bus operators providing passenger transportation service through ECOS. (page 324-326)
- Passenger transport services attract 5% GST with ITC of input services in the same line of business or 12% with full ITC. With effect from 1st January 2022, liability to pay GST on bus transportation services supplied through electronic commerce operators (ECOs) has been placed on the ECO under section 9(5) of CGST Act, 2017. This trade facilitation measure was taken on the representation of industry association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliances.
 - So far, representations against this trade facilitation measure have been received only from two bus operators, both of which are organised as companies. They have informed that as a result of their measure they are not able to fully utilize their ITC. This accumulation of ITC is more pronounced in case of electric buses which are 2-3 times costlier than ordinary buses.
 - **Recommendations of Fitment Committee**
 - To arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, Fitment committee recommended that companies supplying passenger transport services by a motor vehicle may be excluded from the purview of section 9(5) of CGST Act, 2017.
 - It may be clarified that input services in same line of business include transport of passengers (SAC 9965) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (9973), which attracts GST at the same rate as sale of motor vehicles, that is, 28% plus compensation cess.
 - Fitment Committee also recommended to limit ITC on services in the same line of business to 5%. 

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Agenda 4(d) (Annexure-IV)

2. Clarify whether GST is applicable on reimbursement of electricity charges received by the Real estate companies, malls, airport operators etc. from their lessees/occupants (pages 326-327)

- Real estate companies supply electricity to their short term and long-term lessees. These companies take High Tension line from Electricity Distribution Companies (DISCOMs) and convert the same into Low Tension line in transformers and through panels the same is being distributed to the sub lessees/occupants for their consumption.
- DISCOMs bill directly to the real estate companies, who in turn bill to the end consumers on the basis of actual units consumed by the property occupants within their offices/units as per the reading recorded in the sub meters installed at their premises.
- Real Estate Companies also supply electricity for common areas along with renting and/or maintenance.
- Doubts are being raised on the applicability of GST on the aforesaid further supply of electricity by the real estate companies to their lessee or occupants on whose inward supply no GST was leviable.

Recommendations of Fitment Committee


- It may be clarified that whenever electricity is being supplied with renting of immovable property and/or maintenance of premises etc. it forms a part of composite supply where the principal supply is renting of immovable property or maintenance of premise as the case may be and the supply of electricity is an ancillary supply. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise etc. would be applicable.
- Where real estate owner supplies electricity as pure agent, it will not form part of value of his supply. 
- In case of RWAs, where they supply electricity to the residents through sub-meters on actual basis, they will be deemed to be pure agent for this supply

Agenda 4(d) (Annexure-IV)

3. Exempt services provided by District Mineral Foundations from GST (pages 327-330)

- A District Mineral Foundation (DMF) Trust is established by the State Government under section 9B of the MMDR Act, 1957, with an objective to work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district.
- They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children etc.
- DMF's activities are similar to activities that are entrusted to local authority as specified in Eleventh Schedule and Twelfth Schedule of the Constitution.

Recommendations of Fitment Committee

- It may be clarified that DMFT is a governmental authority and thus eligible for the same exemptions as available to any other Governmental Authority. 

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Agenda 4(d) (Annexure-IV)

4. To clarify that job work services for processing of "Barley" into "Malted Barley" attracts GST @5% (pages 330-332)
- Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products such as biscuits, health and nutritional beverages etc. However, a large part of malt produced in the country is used for manufacture of beer and alcoholic liquor for human consumption
 - The issue involved is whether services by way of jobwork for conversion of barley into malt attracts GST at 5% prescribed for "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff" or at the rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption".

Recommendations of Fitment Committee

- It may be clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) "which covers job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST.
- Past assessments of job work services in relation to manufacture of malt may be regularized on as is basis.

Agenda 4(d) (Annexure-IV)

5. To specify a positive list of services under Sr. No. 3 & 3A of notification No. 12/2017-Central Tax (Rate) (pages 332-333)
- This issue has been discussed in the 45th, 47th and 48th GST Council meetings held on 17.09.2021, 28&29.06.2022 and 17.12.2022 respectively.
 - Existing entries at Sl. No. 3 and 3A of notification No. 12/2017-CTR dated 28.06.2017 may be retained.
 - Prior to January, 2022 this exemption was also available to governmental authority or governmental entity.

Recommendations of Fitment Committee

- Entries at Sl. No. 3 and 3A of notification No. 12/2017-CTR dated 28.06.2017 may be retained as they are with no change.
- A new entry may be created to exempt following five services supplied to Governmental Authority:
 - Water Supply
 - Public health
 - Sanitation Conservancy
 - Solid waste management
 - Slum improvement and upgradation

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Agenda 4(d) (Annexure-IV)6. To bring supplies made by Indian Railways under forward charge mechanism

(pages 333-335)

- Indian Railways (IR), in addition to transportation services also provides various other services such as issue of licenses for catering, renting of immovable property, sale of old and used goods etc., GST on which is payable under reverse charge basis.
- Inability of Indian Railways to avail ITC on account of RCM along with other reasons such as exempt supplies has led to blockage of huge amount of ITC. (As informed by IR, Rs. 1300 crores approx. have been blocked).
- Recently, services by Department of Post have also been brought under forward charge on recommendations of the 47th GST Council.

Recommendations of Fitment Committee

- All goods and services supplied by Indian Railways may be brought under forward charge.
- Indian Railways may be excluded from the exemptions given to services supplied by Government to individuals, unregistered business entities or to Central or State Governments, local authorities as services by IR will now be taxable under Forward Charge Mechanism.

Agenda 4(d) (Annexure-IV)7. Clarification on entry 54(g) of 12/2017-CT(R) dated 28.06.2017 with regard to the scope of exemption for commission agent in facilitating the sale of agricultural produce. (pages 335-337)

- CAMPCO is a multi-state cooperative of Karnataka and Kerala. It purchases arecanut directly from agriculturists and sells it to buyers in northern parts of India through its Selling Representatives (SRs).
- According to CAMPCO, they do grading and packaging of arecanut in standard bags before supplying it to buyers without altering its essential characteristics.
- Show cause notices have been issued to the SRs of CAMPCO demanding GST on the commission charged by the SRs from CAMPCO.

Recommendations of Fitment Committee

- CAMPCO may be advised to approach Authority for Advance Ruling.

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Agenda 4(d) (Annexure-IV)8. To clarify applicability of GST on Horticulture Contracts supplied to CPWD (pages 337-338)

- Public parks in government residential colonies, government offices and other public areas such as India Gate lawns, Raj Ghat and other Samidhi Sthals are developed and maintained by CPWD.
- Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.
- Sr. No. 3 and 3A of notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 75%, provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Recommendations of Fitment Committee

- It may be clarified to CPWD that supply of pure services and/or composite supply by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) to CPWD are exempt from GST under Sr. No. 3 and 3A of the notification No.12/2-17-CTR dated 28.06.2017.

Agenda 4(d) (Annexure-IV)9. Amendments to notification No. 11/2017-CT(R) dated 28.06.2017 consequent to amendment of CGST Act, 2017 (pages 338-339)

- In GST, 'goods' by definition include actionable claims. Therefore, supply of actionable claims by way of lottery, betting and gambling is a supply of goods.
- The rate for "Specified Actionable Claim" is prescribed in Sr. No.227A of Schedule IV of the goods rate notification No. 1/2017-CT (R) dated 28.06.2017. Specified Actionable Claim includes actionable claims involved in or by way of race clubs and gambling.
- Therefore, entry at Sr. No. 34(iv) of the services rate notification No. 11/2017- CTR dated 28.06.2017 which specifies 28% GST for "services provided by a race club by way of totalizator or a license to bookmaker in such club" may be rationalized as "services provided by a race club by way of licensing a bookmaker in such club" as supply by a race club by way of a totalizator is supply of actionable claims and not services.
- Further entry at Sr. No. 34(v) of the services rate notification No. 11/2017- CTR dated 28.06.2017 which specifies GST rate of 28% on "gambling" may be omitted as gambling is already included under Sl. No. 227A of the goods rate schedule under "Specified Actionable Claim"

Recommendations of Fitment Committee

- It was recommended that the entries in the service rate notification be suitably amended/rationalized.
- In addition to above, entry 999692 and 999694 may be deleted from the scheme of classification of services (Annexure to the notification No. 11/2017-CTR dated 28.06.2017).

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Agenda 4 (Part II) (ii) -Volume II

10. (a) To clarify whether service by way of hostel accommodation, service apartments /hotels booked for longer period is a service of renting of residential dwelling for use as residence and exempted as per entry no. 12 of the notification No. 12/2017-CT (Rate) dated 28/06/2017.

(b) Request for GST exemption on hostels for poor and middle-class students run by charitable trusts. (pages 10-15)

- There is no GST on hostel fee or rent collected by educational institutions whether private or Government including schools, colleges, and universities, from students living in their hostels. (Sl. No. 66 of notification No. 12/2017 - CTR).
- Hostels run privately which do not belong to any educational institutions have to pay GST as applicable. They are exempt upto threshold turnover of Rs. 20 lakh. Earlier, hotel accommodation having tariff of Rs. 1000 per day or less was exempt from GST. Private hostels charging Rs. 30000 or less per month were taking benefit of this exemption.
- This exemption in respect of hotel accommodation having tariff of Rs. 1000 or less per day has been withdrawn with effect from July, 2022 based on the recommendations of GoM on rate rationalization. (47th GST Council meeting).
- Now private hostels are claiming exemption applicable to renting of residential dwelling for use as residence. (Sl. No. 12 of notification No. 12/2017 - CTR).

Recommendations of Fitment Committee

- Chapter heading 9963 may be deleted from Column No. 2 in the notification No. 12/2017- CT(R). to remove ambiguity. By doing so only the entry of residential dwelling falling under 9972 will be exempted.
- Further, an Explanation may be inserted in Sl. No. 12 of Notification No. 12/2017-CT(R) dated 28.06.2017 stating that nothing contained in this entry shall apply to:
 - (i) accommodation services for students in student residences; and
 - (ii) accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.



Agenda 4 (e)(Annexure-V): Recommendations for no change (pages 340-350)

1. To apply uniform GST rate of 5% on Business Correspondent services provided in both rural/urban areas. (pages 340-341)

- Presently, 18% GST is applicable on the entire chain of banking services irrespective of the fact that services are being offered by the banking company or their banking correspondent.
- Sl. No. 39 of notification No. 12/2017- CTR dated 28.06.2017 provides a specific exemption for services provided by Banking Correspondent(BC)/ Banking Facilitator(BF) to banking companies in respect of rural area branches.
- Specific exemption for services provided by BC/BF to banking companies in respect of rural area branches has been given in line with the objectives of financial inclusion.
- Fitment Committee examined the issue and found no merit in the request to apply uniform rate of 5% on BC/BF services provided in both rural/urban areas.

Recommendations of Fitment Committee

- Status Quo to be maintained

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Agenda 4 (c)(Annexure-V): Recommendations for no change (pages 340-350)

2. To bring renting of residential dwellings by registered persons to registered persons under Forward Charge Mechanism. (pages 341-342)
- Various registered persons like body corporates are engaged in the business of renting of residential dwellings to other registered persons who further give these dwellings on rent to their employees for residence.
 - Such transactions of renting of residential dwelling by registered person to a registered person are liable to GST under reverse charge vide notification No. 05/2022 CTR dated 13.07.2022 and accordingly, these transactions are exempt supply for the service provider i.e. a registered person.
 - Fitment Committee examined the issue and found no real life examples or difficulties in implementation of the said notification were brought to notice by representing association.

Recommendations of Fitment Committee

- Status Quo to be maintained

Agenda 4 (c)(Annexure-V): Recommendations for no change (pages 340-350)

3. To clarify that 'sale of land' at Entry No. 5 of Schedule III of the CGST Act includes assignment of leasehold rights in such land (pages 342-344)
- It has been represented that "assignment of leasehold rights in land" is akin to "sale of land" and covered by Entry No. 5 of Schedule III of the Central Goods and Services Tax, Act 2017
 - The activity of assigning leasehold rights in land is also a beneficial interest in land and should also qualify as "land". Accordingly, the transaction of assignment of leasehold rights in land should qualify as 'sale of land' and GST should not be leviable as per Entry No. 5 of the Schedule III of the CGST Act, 2017.
 - Fitment Committee examined the issue. Sale of land and lease of land are not the same thing. While sale of land results in transfer of title to land along with all the benefits arising out of it, the lease of land does not result in transfer of title to that land or all rights/benefits arising out of it.
 - The actual control to dispose of or sell the immovable property lies with the owner of the land. The lessee cannot sell the land.
 - Therefore, the question of lease of land being covered under entry 5 of Schedule III, which deals with sale of land and building does not arise.

Recommendations of Fitment Committee

- Status Quo to be maintained

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Agenda 4 (e)(Annexure-V): Recommendations for no change (pages 340-350)4. Exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST (page 344)

- It has been submitted that the members had obtained land on long-term lease for industrial purpose from various State Government Industrial Development Corporations for conducting its business operations. Such members have assigned the right in land to various parties for consideration.
- While the initial lease is exempt from GST, if the lessor further assigns the leasehold rights in the land and collects consideration equal to the proportionate amount of lease premium for the remaining lease, the same is currently not exempt from payment of GST.
- Fitment Committee examined the issue. Exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST will encourage hoarding of industrial plots for the purpose of re-sale and defeat the objective of promoting and setting up of industrial units.
- During the discussion on the issue a query arose whether ITC of lease of industrial plots is available or blocked by Section 17(5)(d) of CGST Act, 2017. Fitment Committee recommended to refer this issue to Law Committee.

Recommendations of Fitment Committee

- Status Quo to be maintained

Agenda 4 (e)(Annexure-V): Recommendations for no change (pages 340-350)5. Request from State of Nagaland to keep the rate of GST @ 12% on works contract services which commenced prior to 18.07.2022. (pages 345-346)

- Enhanced rate of GST @ 18% should not be levied for works contract started prior to 18.07.2022 in the State of Nagaland.
- Working season in state like Nagaland is short due to rains and due to resource constrains these works spill over one financial year to another.
- Therefore, increased rate of GST will cost 6% more on the budgeted amount for large number of ongoing works as order were issued prior to 18.07.2022.
- Fitment Committee examined the issue. Similar issue was examined and not acceded to by the GST Council in 47th meeting of GST Council held on 28-29 June, 2022. The Council did not agree to the proposal due to following reasons:
 - There are clear provisions for the manner in which continuous supply is subject to GST. The standard rate of 18% will apply only to the invoices issued for such construction on or after 18.07.2022.
 - Any request if agreed for one sector would invite similar request from other sectors.
- If 12% rate is continued for old contracts, multiple rates of 12% and 18% would be there for many years in future leading to complex rate structure.

Recommendations of Fitment Committee

- Status Quo to be maintained

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Agenda 4(f) (Annexure-VI)1. Services provided by Central Government or State Government or Governmental Authority by way of granting of long term lease (pages 355-357)

- Services provided by Central Government or State Government or Governmental Authority or local authority by way of granting long term lease (exceeding 30 years) of land of industrial plots for development for infrastructure for financial business should be exempted from GST.
- One of the Authority for Advance Ruling held that one time long term lease premium payable/paid by the Corporation to Urban Development Authority is taxable supply.
- Request is to clarify the said issue.
- The matter was deferred in the 43rd GST Council held on 28th May, 2021.
- The matter was examined in the Fitment Committee and it was recommended that the matter may be referred to the GoM on real estate for examination, as it is closely related to the issues already before the GoM.

Recommendations of Fitment Committee

- The matter may be deferred.

Agenda 4(f) (Annexure-VI)2. To clarify the nature and taxability of various supplies in relation to crypto eco-system (page 357)

- GST Council in its 47th meeting held on 28-29 June 2022 and in its 48th meeting held on 17 December 2022, has deferred the issues regarding the nature and taxability of various supplies in relation to the crypto eco-system.
- It was felt that the issues involved in crypto ecosystem need deeper study. It was decided that Haryana and Karnataka shall study all aspects and submit a paper before the Fitment Committee in due course. Both Haryana and Karnataka expressed their inability to submit the paper.
- The matter was deliberated in the Fitment Committee. It was agreed that TRU may study the issue and submit a paper.

Recommendations of Fitment Committee


- The matter may be deferred.

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Agenda 4(f) (Annexure-VI)3. Harmonisation of GST Rate Schedule on Services and the Classification of Services adopted for GST (pages 357-359)

- Currently the GST rate schedule for services does not mention the classification of services at the 6-digit level. The sub-categorization of services beyond the 4-digit level has been carried out only for those services, on which a rate lower or higher than the standard rate of 18% was to be prescribed.
- The taxpayers are required to declare in the invoice/GST returns not the Sl. No. of GST Rate Schedule under which they have paid GST but the 6-digit classification of services in the Scheme of Classification annexed to the Rate Schedule. As a result, data of services for which a concessional rate of 5% or 12% or a higher rate of 28% has been notified is not captured.
- This data – the value of services, GST collected, GST paid in cash and through credit – is very important for policy formulation.


Recommendations of Fitment Committee

- The draft revised rate schedule of services at 6-digit level of classification may be circulated to all states for comments, after which the same may be examined by Fitment Committee/sub-committee.
 - The same shall then be placed before the GST Council for approval. Once approved, it shall be placed in the public domain and implemented after incorporating any changes required therein in view of the feedback received and after a drop-down mechanism for selecting 6-digit classification of services is made available in GSTN portal.
 - May be deferred.
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Agenda 4(f) (Annexure-VI)4. Clarify whether GST is applicable on charges/ fees like FSI paid by builders to local authorities under RCM. (pages 359-364)

- In construction industry, all builders & developers pay various charges to local municipal authorities in the form of FSI premium, road permission charges, scrutiny fees, liasoning fees, staircase premium, water charges, sewerage charges etc.
- One view is that GST is not payable on supply of FSI by municipal corporation to the registered person, since these services are in relation to "Urban planning including town planning" and "Planning of land-use and construction of buildings" listed in XIIth Schedule
- The other view is that supply of FSI is not an integral part of town-planning.
- During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination.

Recommendations of Fitment Committee

- The matter may be deferred.
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Agenda 4(Part II) (ii) -Volume -II

5. To declare Delhi Development Authority as a Local Authority for the purposes of GST. (page 10)

- As per section 2(1)(d) of National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, DDA is "a local authority" established under the Delhi Development Act 1957.
- Section 3(31) of General Clauses Act 1897 defines a local authority as "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund. Supreme Court in the R.C Jain case (1981 AIR 951) has held DDA to be a Local Authority.
- During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination.

Recommendations of Fitment Committee

- The matter may be deferred.



Agenda 4 (part II) (ii) Volume II

6. Ascertaining value of land for deciding value of construction services in case of sale of commercial /residential apartments. (pages 15-18)

- Section 15(5) of CGST Act, 2017 empowers Government to notify supplies the value of which will be determined in the manner as prescribed. Accordingly, modalities of valuation have been prescribed, exercising this power, on the recommendations of the Council.
- A similar request on valuation of land based on pin code, area, etc. was placed before 47th meeting of GST Council held in June, 2022, however no action was recommended by the Council because the matter has been litigated in the courts and is sub-judice at present.
- Gujarat High Court has not only directed to deduct value of land on actual basis where it is ascertainable, but has also ordered to refund the excess amount of tax paid on this count in the past. The said order of the Hon'ble High Court has been contested before the Supreme Court. An appeal filed against the Gujarat High Court order is pending in the Hon'ble Supreme Court.

Recommendations of Fitment Committee

- The matter may be deferred.

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Agenda 4 (part II) (ii) – Volume II

7. To clarify whether GST is leviable on the incentive amount that is shared by acquirer bank with other stakeholders in the digital payment ecosystem. (pages 18-19)

- Applicability of GST on incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions was examined in the 48th GST Council meeting held on 17th December, 2022 and Circular 190/02/2023- GST dated 13.01.2023 was issued clarifying that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.
- Clarification now being sought by MeitY is regarding incentive amount that is further shared by acquiring bank with other stakeholders in the digital payment ecosystem.
- In the Gazette Notification dated 17th December 2021, it was mentioned that *'The incentive will be shared by the acquiring banks with other stakeholders. The distribution of the incentive amongst the stakeholder will be decided by NPI in consultation with the Banks'*.
- Further, vide Gazette Notification dated 14th January 2023, it was stated that *'The incentive will be shared by the acquiring banks with other payment system participants and the payment system operator, in the proportion and manner decided by NPCI in consultation with the participating banks'*.
- The issue was discussed in the Fitment Committee. Karnataka stated that it shall send a note on the issue and the matter may be deferred.

Recommendations of Fitment Committee

- The matter may be deferred.



Agenda 4 (c)(Annexure-V):

8. Whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the RERA Act, 2016. (pages 346-348)

- Real estate projects and real estate agents have to get themselves registered with the (RERA) for which they get a registration/renewal fee. They also collect penalty in case of failure to register or acting in contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016.
- RERA has claimed that their statutory function of regulating the real estate development and construction of the building entrusted to the RERA falls squarely under Entry No.1 and 2 of the Twelfth Schedule of the Indian constitution.
- During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination.

Recommendations of Fitment Committee

- The matter may be deferred.



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Agenda 4 (c)(Annexure-V):9. Levy of GST on renting of commercial property on RCM basis (pages 348-350)

- Vide notification No. 05/2022- Central Tax (Rate) dated 13th July 2022, service by way of renting of residential dwelling to a registered person has been brought under reverse charge and tax is to be paid by the registered person who is taking the said dwelling on rent.
- This implies that even if the rent of the said property is less than Rs. 20 lakhs (threshold for registration) it would be subject to GST.
- Where the person providing service of renting of commercial property is unregistered (on account of threshold for registration), no GST is applicable.
- A number of instances have been noticed where the rent or lease deed of value less than Rs 20 lakhs is prepared or the service is artificially split to remain below the registration threshold. Thus where the service by way of renting of commercial property is provided to a registered person the same should be subject to RCM.
- During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination.

Recommendations of Fitment Committee:

- The matter may be deferred.

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