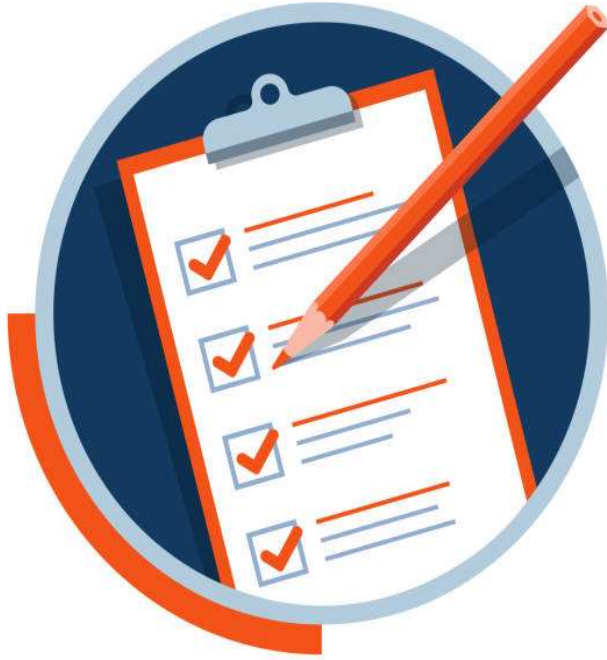


1. Recommendations by Fitment Committee
2. Centre-State Co-ordination
3. Extension of Amnesty schemes
4. Setting up of GST Appellate tribunal
5. Treatment and taxation on Online Gaming, casinos etc.
6. Role of GST Implementation Committee (GIC)
7. Other important recommendations



1. Recommendations by Fitment Committee

Recommended by Fitment Committee

- Goods

26th July, 2023

Kachri/ Kachri pappad; Unfried snack pellets manufactured through extrusion process / 1905 90 30

Agenda 4(a) (Annexure-I, Sr No 1)

- ▶ The key difference between the extruded or expanded snack pellets attracting 18% GST and these products appears to be that while the **first is manufactured** through mechanised process of extrusion and expansion resulting in ready to eat form, the **latter needs to be fried**.
- ▶ Fitment Committee recommended to **reduce GST to 5%** on Uncooked/unfried extruded products by whatever name called.
- ▶ Fitment Committee also recommended to regularize for past period on ‘**as is where is**’ basis due to genuine doubts



Fish Soluble Paste (HS 2309)

Agenda 4(a) (Annexure-I, Sr No 2)

- ▶ Fish soluble Paste is a by-product produced while producing fish meal and fish oil.
- ▶ It attracts 18% GST under the residual entry.
- ▶ Fishmeal attracts GST@5%,
- ▶ Since the final product fish meal attracts 5%, there appears to be merit in the argument that by waste generated as a by-product during the process of manufacture of fishmeal should not attract 18%
- ▶ Fitment Committee recommended to reduce GST rate on Fish Soluble Paste (2309) to 5%
- ▶ for the past period on “as is basis” in view of genuine interpretational issues.

Dinutuximab (Quarziba) / chapter 30

Agenda 4(a) (Annexure-I, Sr No 3)

- ▶ Estimated cost is around Rupees 63 lakhs and the same has to be imported.
- ▶ Patients and their kins are finding it difficult to pay the IGST @12%
- ▶ Fitment Committee recommended to **exempt IGST** on Dinutuximab (Quarziba) medicine imported for personal use



Medicines and Food for Special Medical Purposes (FSMP) used in the treatment of rare diseases

Agenda 4(a) (Annexure-I, Sr No 4)

- ▶ As part of post Budget 2023-24, BCD exemption have been given to drugs and Food for Special Medical Purposes (FSMP) when imported for personal use for treatment of rare diseases enlisted in the National Policy for Rare Disease NPRD
- ▶ The BCD exemption currently available for drugs used in treatment of rare diseases imported by Centres of Excellence for Rare Diseases
- ▶ Fitment committee recommended to **exempt IGST on medicines and Food** for Special Medical Purposes (FSMP) used in the treatment of rare diseases enlisted under the NPRD, 2021 which are **imported for personal use** subject to existing conditions and when **imported by Centres of Excellence** or any person or institution on recommendation of any of the listed Centre of Excellence

Trauma, Spine and Arthroplasty implants/CTH - 9021

Agenda 4(a) (Annexure-I, Sr No 5)

- On the recommendations of 47th GST Council meeting, GST rate of 5% was fixed on all goods viz. trauma, Spine and Arthroplasty implants falling under heading 9021 w.e.f. 18.07.2022.
- Earlier there were two entries @ 5% and @ 12% for similar goods under 9021, which was causing confusion.
- To regularize the matter for the period prior to 18.07.2022 on “as is basis” in view of genuine interpretational issues, that is , in case of payments at 5% or 12%.

Raw cotton supplied by agriculturists to Cooperatives

Agenda 4(a) (Annexure-I, Sr No 6)

- May be clarified that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply to the cooperatives (being a registered person) attracts 5% GST under reverse charge mechanism.
- The issue for the past periods may be regularized on as is basis.

NN 4/2017 Central Tax (Rate) dated 28th June 2017

S.N.	Tariff item	Description	Supplier	Recipient
4A	5201	Raw cotton (<i>NN 43/2017 dated 14.11.2017 w.e.f. 15.11.2017</i>)	Agriculturist	Any registered person

Consequential changes post New Foreign Trade Policy 2023-28

Agenda 4(a) (Annexure-I, Sr No 7)

- Foreign Trade Policy 2023-28 came into force with effect from 1st April, 2023
- Several schemes including Advance Authorisation (AA), Export Promotion of Capital Goods (EPCG), Duty Free Import Authorisation (DFIA), Duty Drawback Scheme (DBK), Rebate on State and Central Taxes and Levies (RoSCTL), Remission of Duties and Taxes on Exported Products (RoDTEP) are also continued in the new FTP 2023-28.
- Consequential changes will need to be carried out in notifications which would be technical in nature such as cross-referencing to new Trade policy

GST rate of 5% on imitation zari thread



input kasab (thread) is at 12%.



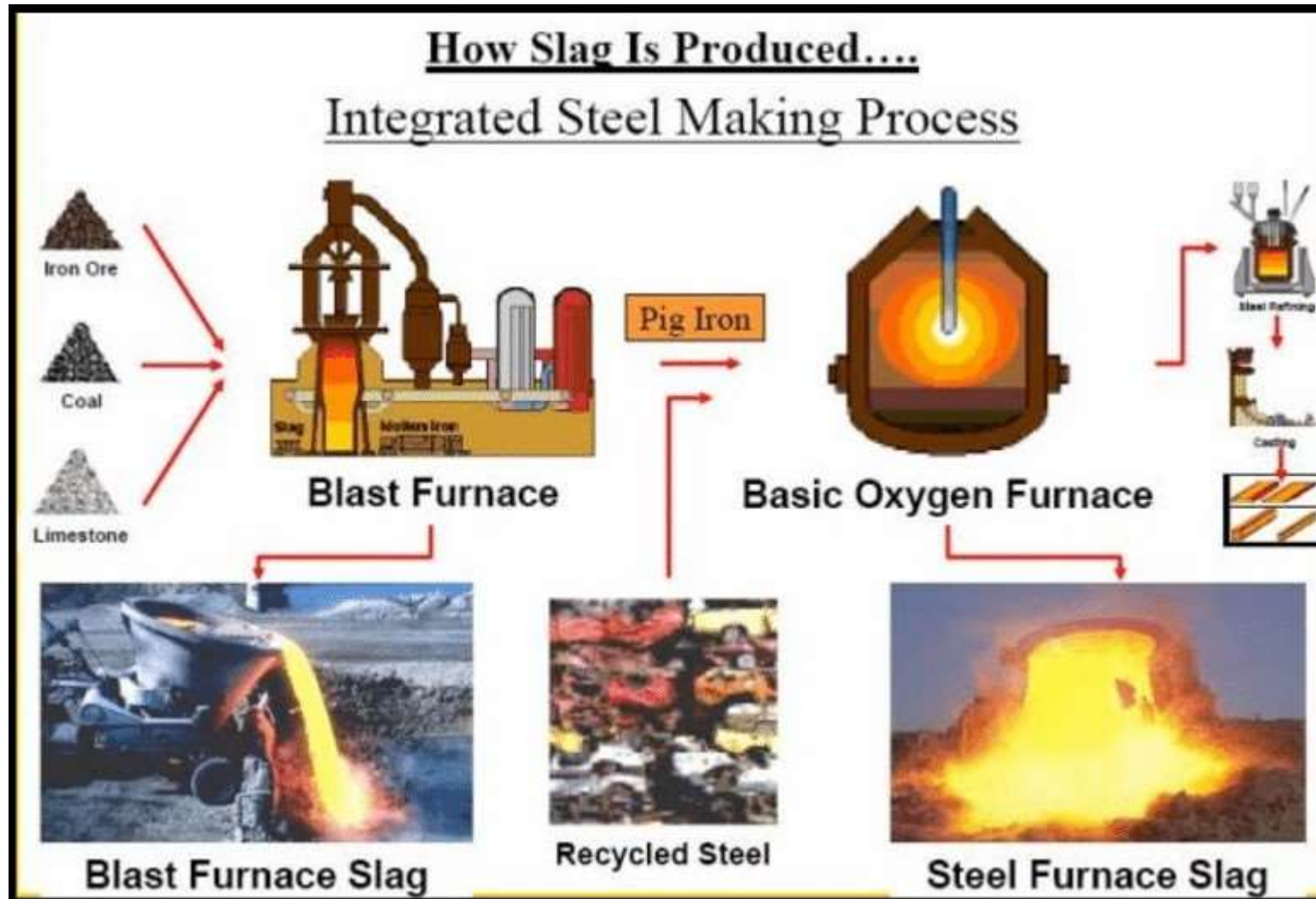
Reduced at 5% from 15th GST Council Meeting

GST rate of 5% on imitation zari thread

Agenda 4(a) (Annexure-I, Sr No 8)

- In the 15th Council meeting, the Council agreed to tax embroidery or zari articles i.e., imi, zari, kasab, saima, dabka, chumki, gota, sitara, naqsi, kora, glass beads, badla, gizai at the rate of 5%.
- It was seen that the embroidery articles including imitation zari embroidery articles are taxed at 5% but the input kasab (thread) is at 12%.
- GST on imitation zari thread or yarn known by any name in trade parlance may be reduced from 12% to 5%.
- The issue for the past periods may be regularized on as is basis.

LD slag



BF Slag

- Reduced to 5% in 23rd GST Council Meeting

LD Slag

- Currently at 18%

LD slag

Agenda 4(a) (Annexure-I, Sr No 9)

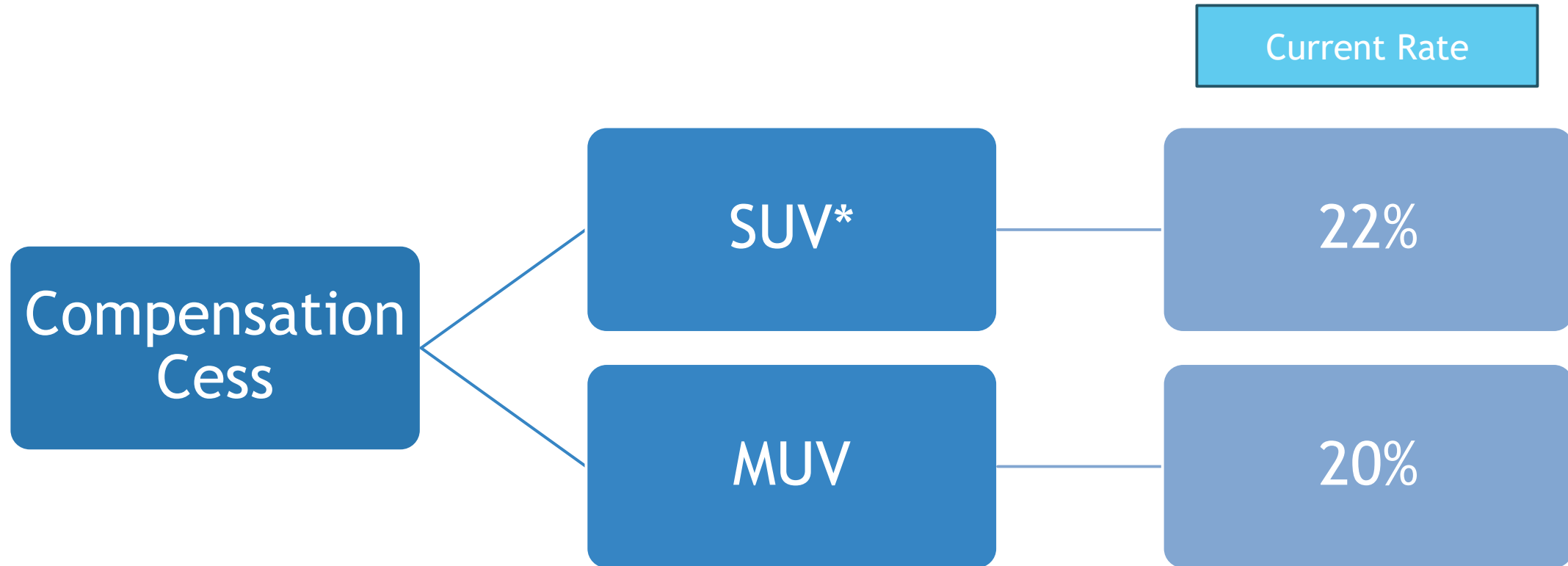
- Currently, Slag generated from basic oxygen furnace (BOF) or Linz-Donawitz (LD) attracts GST @ 18% while other by-products such as Blast Furnace Slag (BFS) Slag and Fly Ash attracts 5% GST.
- LD slag poses an environmental problem
- The GST rate on BF Slag/Fly Ash was reduced to 5% in the 23rd GST Council meeting based on the reason that it is an environmentally harmful product
- considering that the consumption of LD slag needs to be encouraged for better utilization of this waste and protection of environment, Fitment Committee recommended to reduce the GST rate to 5% at par with Blast Furnace Slag (BFS) Slag and Fly Ash.

Amend Exemption Notification 50/2017 - Customs dt 30.06.2017 to include RBL Bank

Agenda 4(a) (Annexure-I, Sr No 10)

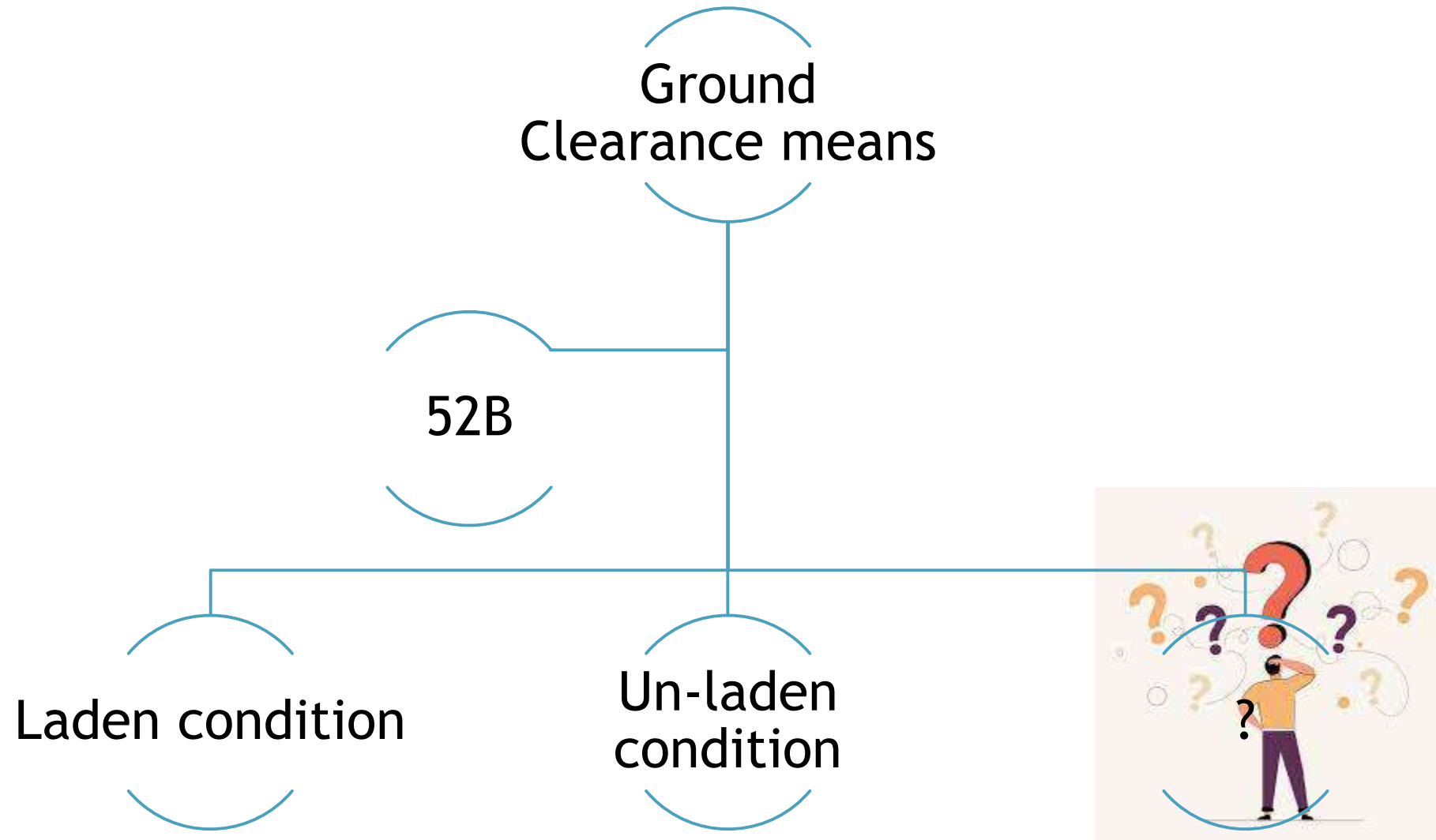
- IGST exemption is available on imports of gold, silver or platinum by specified banks and other entities mentioned in List 34 of S. No. 359A of Notification No. 50/2017 – Customs dated 30.06.2017.
- Directorate General Export Promotion has recommended for amending the List 34 suitably to include the name of RBL
- RBL Bank is a authorized Bank mentioned in Para 4.40 of FTP 2023 (read with Appendix- 4B)
- Fitment Committee recommended to update list 34 in notification 50/2017- Customs so as to include RBL bank and ICBC bank and update the list no. 34 as per revised Appendix 4B of FTP 2023 subject to confirmation from DGEP and DGFT

Applicability of compensation cess on MUV Vehicle



**SUV length more than 4-metre, engine capacity more than 1500cc and ground clearance 170 mm*

Applicability of compensation cess on MUV Vehicle



Applicability of compensation cess on MUV Vehicle

Agenda 4(a) (Annexure-I, Sr No 11)

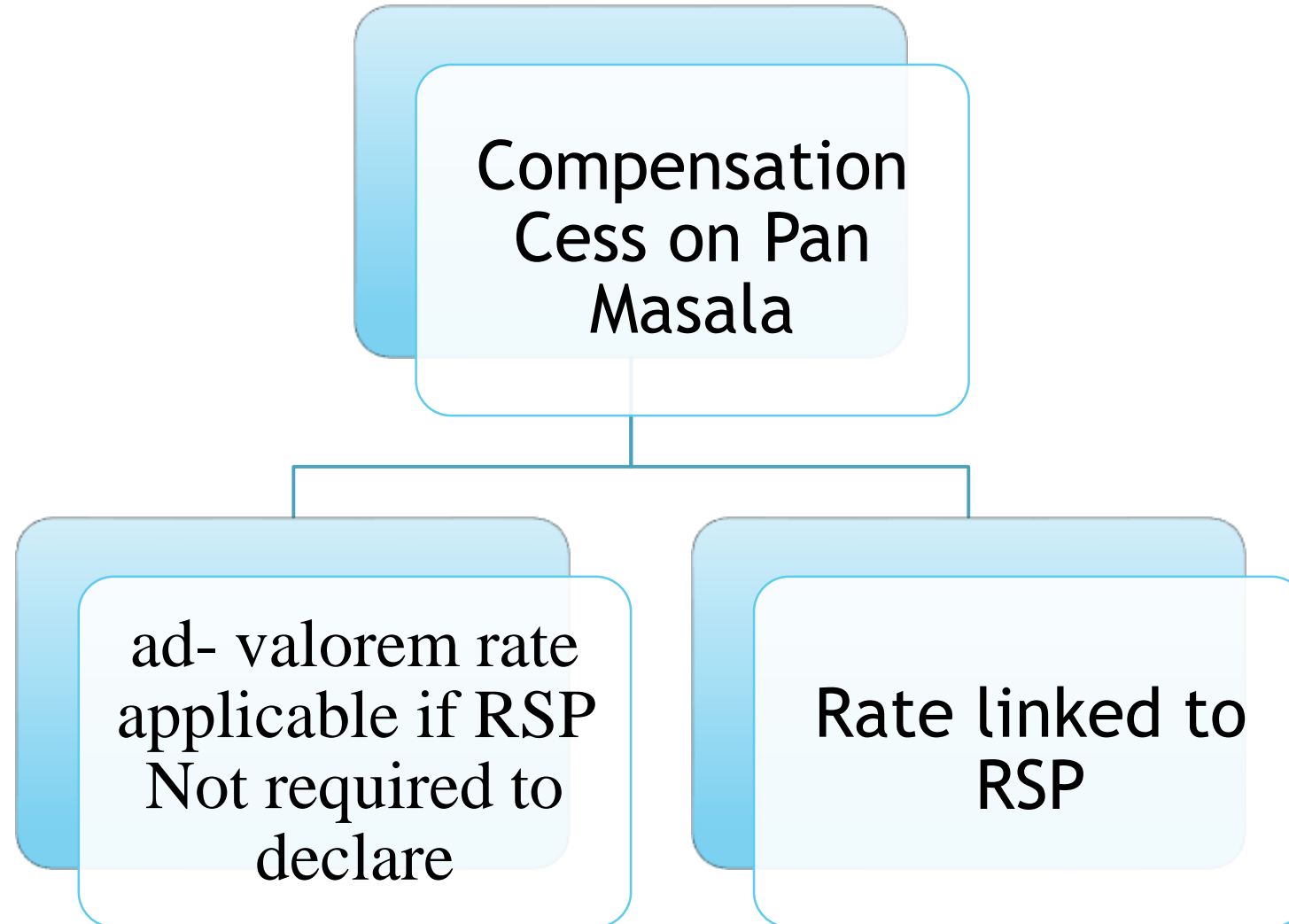
- Compensation cess of 22% is applicable on *Sports Utility Vehicles (SUVs)* (of length more than 4-metre, engine capacity more than 1500cc and ground clearance 170 mm).
- FC recommended to include all utility vehicles by whatever name called provided they met the parameters of Length greater than 4000 mm, Engine capacity greater than 1500 cc and Ground clearance more than 170 mm.
- FC also recommended to insert an Explanation to clarify for the purposes of the said notification entry “Ground Clearance” in entry 52B means Ground Clearance in un-laden condition.

Compensation Cess rate on Pan Masala, chewing tobacco, etc.

Agenda 4(a) (Annexure-I, Sr No 12)

- To implement the recommendations made by GST Council in its 49th meeting held on 18.02.2023 which accepted the report of Group of Ministers (GoM), the levy of compensation cess was converted from ad valorem tax to specific tax-based levy to boost the first stage (manufacturer level) collection of revenue in respect of Pan Masala, chewing tobacco, etc
- The rates are linked to RSP for such products.
- In cases where RSP is not required to be declared by law on pan masala and tobacco products, earlier ad- valorem rate, applicable as on 31st March 2023 for such goods, may be notified by amending the compensation cess notification.

Compensation Cess rate on Pan Masala, chewing tobacco, etc.



Desiccated coconut/ 0811100

Agenda 4(a) (Annexure-I, Sr No 13)

- Vide corrigendum issued on 27-07-2017 to notification 01/2017-CT(R) dated 28.06.2017, desiccated coconut was declared as a taxable product at 12% GST.
- Based on corrigendum issued in July 2017, desiccated coconut manufacturers started collecting GST at 12% w.e.f from 28.07.2017. However, they have requested to regularize the intervening period between issue of original notification and issue of corrigendum prescribing 12% GST rate.
- Fitment Committee recommended to regularize the period 01.07.2017 to 27.07.2017 on “as is where is” basis on account of genuine doubt

Areca Leaf Plates and Cups (Chapter 46)

Agenda 4(a) (Annexure-I, Sr No 14)

- Currently, plates and cups made up of all kinds of leaves/ flowers/bark are already exempt vide Sl No. 114C of notification 2/2017-Central Tax (Rate) dated 28.6.2017.
- In the 37th GST Council meeting held on 20.9.2019, GST Council had recommended the reduction in rate of cups and plates made of leaves of areca tree from 5% to nil.
- No action required

Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services - Annexure IV

Annexure IV

Agenda 4(d) (Annexure-IV, Sr No 1)

- Satellite launch services supplied by ISRO, Antrix Corporation Ltd (ACL) and New Space India Ltd (NSIL) are already exempt from GST
- GST on **satellite launch services provided by private organizations** may be exempted to promote start ups.

Agenda 4(d) (Annexure-IV, Sr No 2)

- Anomaly may be rectified by inserting an Explanation that item at sl. No. 3(ie) of the notification No. 11/2017-CTR refers to sub-items of the item (iv),(v) and (vi) of the notification as they existed in notification prior to their omission vide notification No. 03/2022-CTR dated 13.07.2022.

Annexure IV

Agenda 4(d) (Annexure-IV, Sr No 3)

- On the recommendation of 47th GST Council, exemption entry at sl. No. 53A of the notf. No. 12/2017 CTR dated 28.06.2017 which covered “services by way of fumigation in a warehouse of agricultural produce” was omitted vide notification No. 04/2022-CTR dated 13.07. 2022.
- However, a parallel entry at clause (h) of explanation to the entry at Sl. No. 24 (i) of the notification No. 11/2017 CTR dated 28.06.2017 for the same service has not been omitted. • Fitment Committee recommended that the same may be omitted

Annexure IV

Agenda 4(d) (Annexure-IV, Sr No 4)

- GTAs **may not** be required to file declaration for paying GST under forward charge every year. If they have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to reverse charge mechanism (RCM).
- **Last date** of exercising the option by GTAs to pay GST under forward charge may be **31st March of preceding Financial Year** instead of 15th March.
- **1st January** of preceding Financial Year may be the **start date** for exercise of option.

Annexure IV

Forward Charge - Declaration in Annexure V

- Declaration between 1st Jan to 31st March of Preceding FY

Declaration Every Year

- No. If GTA wish to continue with Forward Charge

If Switch from Forward to RCM Option

- Declaration required to submit in new Form Annexure VI

Annexure IV

Agenda 4(d) (Annexure-IV, Sr No 5)

- Hon'ble Gujarat High Court in Mohit Minerals case has ruled that no tax is leviable on the ocean freight for the services provided by a person located in a nontaxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. Hon'ble Supreme Court judgement in Mohit Mineral case passed in 2022 has set aside this liability on the importer.
- In order to restore level playing field to ISLs, the place of supply (PoS) of service of transportation of goods has been changed from 'destination of goods' to 'location of recipient' Finance Act 2023.
- The provisions which were introduced in the notification Nos. 8/2017-ITR, 9/2017-ITR and 10/2017-ITR making the importer liable to pay GST on ocean freight paid to foreign shipping lines under RCM have lost relevance and thus may be amended/deleted.

Annexure IV

Agenda 4(d) (Annexure-IV, Sr No 6)

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

Annexure IV

Agenda 4(d) (Annexure-IV, Sr No 7)

- It may be clarified that supply of food in cinema halls is taxable as restaurant service as long as (a) they are supplied by way of or as part of a service and (b) supplied independently of the cinema exhibition service.
- Where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

MCQ

Q1 – GTA who like to opt forward charge, may file the declaration till

- A. 15th March before start of the FY
- B. 31st March of the Preceding FY
- C. 1st January of the Preceding FY
- D. Within 45 days from the start of the FY

Correct Answer - B

MCQ

Q2 – Place of supply (PoS) of service of transportation of goods has been changed vide Finance Act 2023

- A. location of recipient
- B. destination of goods
- C. location of Supplier
- D. Not Taxable

Correct Answer - A

MCQ

Q3 – GST Rate on Kachri/ Kachri pappad; Unfried snack pellets manufactured through extrusion process / 1905 90 30

- A. 18%
- B. 12%
- C. 5%
- D. Exempted

Correct Answer - C

MCQ

Q4 – Who will pay the tax on Supply of kala cotton, from agriculturists to cooperatives

- A. Recipient under Reverse Charge
- B. Supplier under Forward Charge
- C. No Tax on the Supply of Cotton including Kala Cotton

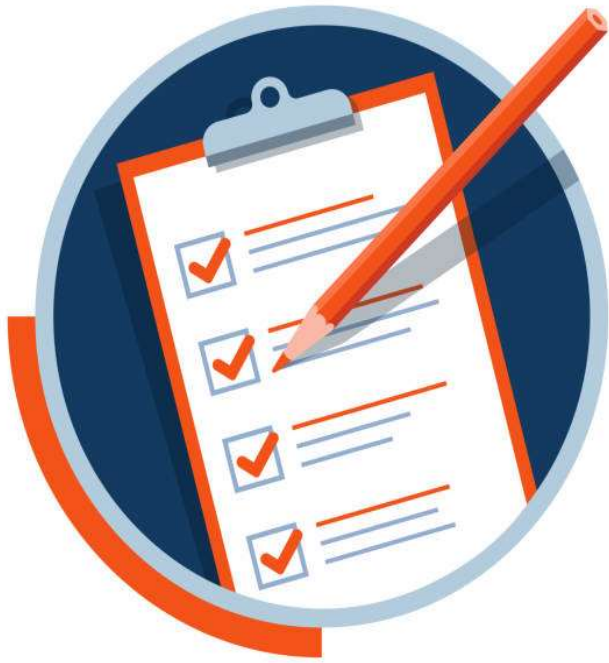
Correct Answer - A

MCQ

Q5 – Which bank is added as authorized Bank mentioned in Para 4.40 of FTP 2023 for IGST exemption on imports of gold, silver or platinum mentioned in List 34 of S. No. 359A of Notification No. 50/2017 – Customs dated 30.06.2017 subject to the approval of DGEP and DGFT

- A. RBI
- B. RBL
- C. HSBC

Correct Answer - A



4. Centre-State Co-ordination

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

Centre-State Co-ordination

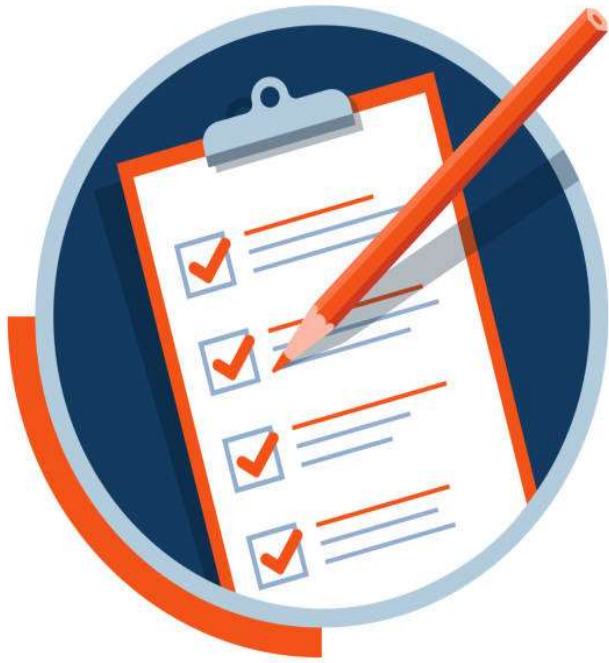
- ▶ The National Coordination Meeting held on 24th April, 2023 under the Chairmanship of the Revenue Secretary. All India drive against fake registrations launched and Instructions No.1/2023 dated 04.05.2023 regarding the conduct of the special drive were issued.
- ▶ Co-ordination Committee may be formed comprising of Central and State Tax Authorities for knowledge sharing on GST matters and coordinated efforts towards administrative and preventive measures.
- ▶ Term of the Committee - Perpetual basis
- ▶ Periodicity of Meeting of the Committee- once every quarter
- ▶ Conveners on rotational basis for one year each.

Constitution of the Committee:

- ▶ The proposed Constitution of the Committee is as follows:
 - i. Zonal Principal Chief Commissioner/ Chief Commissioner of Central Tax (Co chair)
 - ii. Chief Commissioner/ Commissioner of State Tax (Co-chair)
 - iii. Representative of DG GST Intelligence (DGG), CBIC from concerned Zone/ State
 - iv. Additional/Joint Commissioner of office of Zonal Principal Chief Commissioner/ Chief Commissioner of Central Tax and an officer nominated by the Chief Commissioner/ Commissioner of State Tax,
 - v. Any other member/officer may be co-opted with the permission of the Co chairs.
- ▶ The co-opted officers could be officers well conversant with the ground level issues and serve for greater coordination between Centre and States.

Functions and mandate of the Committee

- (i) data sharing
- (ii) Referring any issue requiring a change in Act/Rules/Notification/Form/Circular/Instruction/improvement
- (iii) taxpayer facilitation as well as taxpayer grievances and conducting outreach programme.
- (iv) uniform stand before any legal forum.
- (v) Co-ordination in the matter regarding investigation.
- (vi) Conducting a coordinated verification drive for suspicious taxpayers at local level.
- (vii) Any other GST matter.



5. Extension of Amnesty schemes

Amnesty Scheme extension

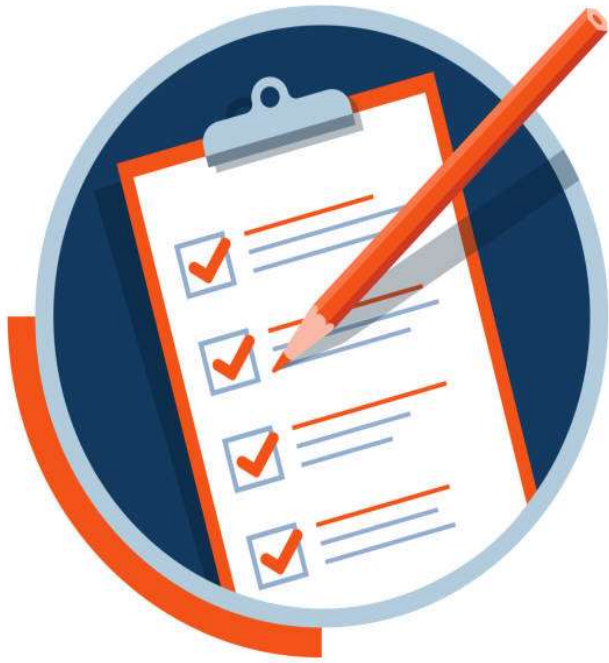
Notification No	Return	Extended to	Late Fees	Condition
26/2023 Central Tax dated 17 th July 2023	GSTR 10	31 st August 2023	CGST 500	Return furnished between the period 1st April, 2023 to the 31st August, 2023
25/2023 Central Tax dated 17 th July 2023	GSTR 9	31 st August 2023	CGST 10,000	Return for FY 17-18 to FY 21-22 has been furnished between the period 1st April, 2023 to the 31st August, 2023
24/2023 Central Tax dated 17 th July 2023	Assessment Order u/s 62	31 st August 2023	Interest as applicable	Who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28th day of February, 2023 → furnish the said return on or before the ¹ [31st day of August, 2023];

Amnesty Scheme extension

Notification No	Return	Extended to	Late Fees	Condition
23/2023 Central Tax dated 17 th July 2023	Revocation of Cancellation	31 st August 2023	CGST 500	Apply revocation after All return has been filled along with Tax, Interest, penalty and late fees
22/2023 Central Tax dated 17 th July 2023	GSTR 4	31 st August 2023	CGST 10,000	Return (GSTR 4) starting to till FY 21-22 has been furnished between the period 1st April, 2023 to the 31st August, 2023

Extension for Manipur

Notification No	Return	Extended to
21/2023 Central Tax dated 17 th July 2023	GSTR 7 for the month of April 2023, May 2023 and June 2023	31 st July 2023
20/2023 Central Tax dated 17 th July 2023	GSTR 3B QRMP for the Quarter ending 30 th June 2023	31 st July 2023



7. Other important recommendations

Other recommendations



GST Appellate Tribunal

Purpose of GoM

As per Provisions of CGST Act,2017

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

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

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

Hon'ble Supreme Court of India

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

Group of Ministers(GoM)

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

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

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

Members of GOM

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

1

26th July 2022 (Hybrid mode)

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

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

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

2

17th August 2022 in Bhubaneswar (Physical meeting)

To discuss the issues and finalize the recommendations.

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

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

Section 109 : Composition of Benches (Finance Act 2023)

- **Composition** : According to Section 109 of the CGST Act, 2017, the jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches.
 - ✓ **Principal Bench** of the Appellate Tribunal shall be at New Delhi which shall consist of the **President, a Judicial Member, a Technical Member (Centre) and a Technical Member (State)**.
 - ✓ constitute such number of **State Benches** at such places and with such jurisdiction as may be recommended by the Council, which shall consist of **two Judicial Members, a Technical Member (Centre) and a Technical Member (State)**.
- **In case difference of opinion** : In cases where there is a difference of opinion between members, the President shall refer such case for hearing,—
 - (a) **State Bench** : to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;
 - (b) **Principal Bench**: to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,and such point or points shall be decided according to the **majority opinion including the opinion of the Members who first heard the case**.

- **Provision of Single Member Bench** : Single Member bench should be empowered, with the approval of the President, to hear cases with tax implication upto ₹ 50 lakh, where no question of law is involved.
- **Power to hear appeals:** State Bench and Principal Bench to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority. If any one of the **issues involved relates to the place of supply, shall be heard only by the Principal Bench.**
- The President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.

Section 110: Qualification of Members (Finance Act 2023)

President	Judge of the Supreme Court or Chief Justice of High Court
Judicial Member	Judge of a High Court or District Judge or an Additional District Judge (With 10 years experience)
Technical Member (Centre)	Min. 25 years of Group A Service + Member of IRS (C&CE) or AIS with three-year experience in GST or existing law
Technical Member (State)	Officer of the State Government or AIS + not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank, not lower than that of the First Appellate Authority



25 Years of Group A Services or equivalent, with at least three years of experience in the administration of an existing law or the goods and services tax or in the field of finance and taxation in the State Government, which may be reduced by the State Government on recommendation of the Council.

first preference shall be given to officers who have worked in the State Government of the State to which the jurisdiction of the Bench extends.

Composition of the **Search-cum-Selection Committee**

Chairperson	Chief Justice of India or a Judge of Supreme Court Nominated by Him
Member	One Secretary of Central Government nominated by the Cabinet Secretary
Member	Chief Secretary of a State to be nominated by the Council
One Member	<p>(A) in case of appointment of a President of a Tribunal, shall be the outgoing President of the Tribunal; or</p> <p>(B) in case of appointment of a Member of a Tribunal, shall be the sitting President of the Tribunal; or</p> <p>(C) in case of the President of the Tribunal seeking re-appointment or where the outgoing President is unavailable or the removal of the President is being considered, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India</p>

Member Secretary

Secretary of the Department of Revenue in the Ministry of Finance of the Central Government

- The Chairperson shall have the casting vote and the Member Secretary shall not have a vote.

Composition of the **Search-cum-Selection Committee** for **Technical Member (State)** of a **State Bench**

Chairperson

the Chief Justice of the **High Court** in whose jurisdiction the **State Bench** is located

Member

the senior-most Judicial Member in the State, and where no Judicial Member is available, a retired Judge of the High Court in whose jurisdiction the State Bench is located

Member

one Additional Chief Secretary or Principal Secretary or Secretary of the State in which the State Bench is located, as may be nominated by such State Government, not in-charge of the Department responsible for administration of State tax

Member Secretary

Additional Chief Secretary or Principal Secretary or Secretary of the Department responsible for administration of State tax, of the State in which the State Bench is located

- **Retirement age of Members** : President and the Members 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
- **Resignation** : The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office.

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earlier

- **Number of Benches in each State** : States with less than 5 crore population should have maximum 2 benches and no State should have more than 5 benches.

Agenda of the 50th Council Meeting

- The final Report and recommendations of the Group of Ministers (GoM) on constitution of Goods and Services Tax Tribunal constituted tabled before the GST Council in its 49th Meeting.
- Recommended to establish one GST Appellate Tribunal with a Principal Bench and State Benches. Each Bench of the Appellate Tribunal to consist of four members i.e. **two Judicial Members and two Technical Members, one Member from Centre and one from the State.**
- The report of GoM on GSTAT adopted by the Council with certain modifications.
- Amendments in CGST Act incorporated through Finance Act, 2023 (refer clause 149-154 of the Finance Act, 2023), by substitution of sections 109, 110 and 114 of CGST Act, 2017 and by amending sections 117, 118 and 119 of CGST Act, 2017.
- The GST Council to recommend a suitable date for notifying the amendments to CGST Act, 2017 made vide Finance Act, 2023. Accordingly, the States/UTs with legislature may also notify the corresponding amendments in their respective Acts on the same date. The GSTAT would be constituted after these amendments are notified.

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

The States of Andhra Pradesh, Chhattisgarh, Gujarat, Kerala, Telangana, Rajasthan and Uttar Pradesh have defined the jurisdictions of the Benches based on Division/Zone/Revenue division.

Karnataka and West Bengal have defined the jurisdiction of the Benches as entire state jurisdiction

For North-Eastern States, it is submitted that there are five High Courts in North-East in the States of Tripura, Sikkim, Meghalaya, Manipur and Assam. In case of Arunachal Pradesh and Meghalaya, the GSTAT has been proposed at Guwahati, Assam. may be clarified that the appeal arising out of GSTAT order in such cases will fall within jurisdiction of the High Court of the State where the taxpayer is located. Meghalaya has also requested for this clarification.

S.No.	State	No. of Benches proposed	Location of Benches proposed *
1	Andhra Pradesh	3	Vijayawada, Visakhapatnam, Tirupati
2	Arunachal Pradesh	Common Bench with Guwahati, Assam	Guwahati
3	Assam	1	Guwahati
4	Bihar	1	Patna
5	Chhattisgarh	2	Raipur, Bilaspur
6	Delhi	2	Delhi
7	Goa	1	Panaji
8	Gujarat	3	Ahmedabad, Surat, Rajkot
9	Haryana	2	Gurugram Hisar
10	Himachal Pradesh	1	Shimla
11	Jammu and Kashmir	1	Jammu & Srinagar on rotational basis
12	Jharkhand	1	Ranchi
13	Karnataka	3	All three in Bengaluru
14	Kerala	3	Thiruvananthapuram, Ernakulam, Kozhikode
15	Madhya Pradesh	1	Bhopal
16	Maharashtra	7	Mumbai(2), Nagpur, Pune(2), Aurangabad, Thane
17	Manipur	Common Bench with Guwahati, Assam	Guwahati
18	Meghalaya	Common Bench with Guwahati, Assam	Guwahati
19	Mizoram	1	Aizawl
20	Nagaland		
21	Odisha	1	Cuttuck
22	Punjab	1	Chandigarh/Mohali
23	Puducherry	1	Puducherry
24	Rajasthan		
25	Sikkim	Common Bench with Kolkata	Kolkata
26	Tamil Nadu		
27	Telangana	2	Both at Hyderabad
28	Tripura	1	Agartala
29	Uttarakhand	1	Dehradun
30	Uttar Pradesh	5	Lucknow , Varanasi, Ghaziabad, Agra and Prayagraj
31	West Bengal	2	Both at Kolkata

S.No.	State Name	TOTAL Taxpayer	Revenue (Domestic) F.Year 2022-23	No. of Benches requested by States in Agenda
1	Uttar Pradesh	1,798,288	87969	5 (Lucknow , Varanasi, Ghaziabad, Agra and Prayagraj)
2	Maharashtra	1,676,761	270345	7 [Mumbai-2, Pune-2, Thane-1, Nagpur-1 & Aurangabad (Chhatrapati Sambhajanagar)-1]
3	Gujarat	1,142,794	114221	3 (Ahmedabad, Surat and Rajkot)
4	Tamil Nadu	1,113,313	104377	NA
5	Karnataka	985,729	122821	3(Bengaluru)
6	Rajasthan	842,067	45458	2
7	Delhi	778,692	55843	2 (Delhi)
8	West Bengal	717,527	58059	2(Kolkata)
9	Bihar	602,293	16547	1 (Patna)
10	Madhya Pradesh	509,039	36231	1 (Bhopal)
11	Haryana	508,566	86668	2 (Hisar & Gurugram)
12	Telangana	496,953	51830	2 (Hyderabad)
13	Andhra Pradesh	414,274	40232	3 (Vijayawada, Vishakhapatnam and Tirupati)
14	Kerala	399,701	27371	3 (Triruvananthapuram, Ernakulam & Kozhikode)
15	Punjab	384,053	20949	2 (Chandigarh & Mohali)
16	Odisha	320,506	49441	1(Cuttack)
17	Assam	221,656	13710	1 State Bench of GSTAT at Guwahati, Assam
18	Jharkhand	196,868	32019	1(Ranchi)
19	Uttarakhand	195,150	16845	1(Dehradun)
20	Chhattisgarh	171,573	31968	2 (Raipur & Bilaspur)
21	Jammu and Kashmir	136,285	5246	1 (Jammu & Srinagar on rotational basis)
22	Himachal Pradesh	120,679	8778	1(Shimla)
23	Goa	41,960	5520	1 (Panaji)
24	Chandigarh	30,436	2365	Common State Bench of Punjab (Chandigarh)
25	Tripura	30,147	883	1(Agartala)
26	Meghalaya	28,670	2075	Common State Bench of GSTAT at Guwahati, Assam
27	Puducherry	23,760	2373	1(Puducherry)
28	Arunachal Pradesh	17,137	1022	Common State Bench of GSTAT at Guwahati, Assam
29	Dadra and Nagar Haveli, Daman and Diu	15,512	3774	Common State Bench of Maharashtra (Mumbai)- proposed by GSTCS
30	Manipur	13,891	614	Common State Bench of GSTAT at Guwahati, Assam
31	Sikkim	10,368	3155	Common Bench with Kolkata
32	Nagaland	10,212	566	Proposed one Bench
33	Ladakh	7,907	333	Common State Bench of Jammu & Kashmir-- proposed by GSTCS
34	Mizoram	7,534	418	1 (Aizwal)
35	Andaman and Nicobar Islands	5,660	373	Common State Bench of W.B. (Kolkata)- proposed by GSTCS
36	Lakshadweep	347	21	Common State Bench of Kerala - proposed by GSTCS
	Grand Total	13,976,308	1,320,420	36

S.No.`	State Name	TOTAL Taxpayer	Revenue (Domestic) F.Year 2022-23	No. of Benches requested by States in Agenda
1	Maharashtra	16,76,761	270345	7 [Mumbai-2, Pune-2, Thane-1, Nagpur-1 & Aurangabad (Chhatrapati Sambhajinagar)-1]
2	Karnataka	9,85,729	122821	3(Bengaluru)
3	Gujarat	11,42,794	114221	3 (Ahmedabad, Surat and Rajkot)
4	Tamil Nadu	11,13,313	104377	NA
5	Uttar Pradesh	17,98,288	87969	5 (Lucknow , Varanasi, Ghaziabad, Agra and Prayagraj)
6	Haryana	5,08,566	86668	2 (Hisar & Gurugram)
7	West Bengal	7,17,527	58059	2(Kolkata)
8	Delhi	7,78,692	55843	2 (Delhi)
9	Telangana	4,96,953	51830	2 (Hyderabad)
10	Odisha	3,20,506	49441	1(Cuttack)
11	Rajasthan	8,42,067	45458	2
12	Andhra Pradesh	4,14,274	40232	3 (Vijayawada, Vishakhapatnam and Tirupati)
13	Madhya Pradesh	5,09,039	36231	1 (Bhopal)
14	Jharkhand	1,96,868	32019	1(Ranchi)
15	Chhattisgarh	1,71,573	31968	2 (Raipur & Bilaspur)
16	Kerala	3,99,701	27371	3 (Triruvananthapuram, Ernakulam & Kozhikode)
17	Punjab	3,84,053	20949	2 (Chandigarh & Mohali)
18	Uttarakhand	1,95,150	16845	1(Dehradum)
19	Bihar	6,02,293	16547	1 (Patna)
20	Assam	2,21,656	13710	1 State Bench of GSTAT at Guwahati, Assam
21	Himachal Pradesh	1,20,679	8778	1(Shimla)
22	Goa	41,960	5520	1 (Panaji)
23	Jammu and Kashmir	1,36,285	5246	1 (Jammu & Srinagar on rotational basis)
24	Dadra and Nagar Haveli, Daman and Diu	15,512	3774	Common State Bench of Maharashtra (Mumbai)- proposed by GSTCS
25	Sikkim	10,368	3155	Common Bench with Kolkata
26	Puducherry	23,760	2373	1(Puducherry)
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28	Meghalaya	28,670	2075	Common State Bench of GSTAT at Guwahati, Assam
29	Arunachal Pradesh	17,137	1022	Common State Bench of GSTAT at Guwahati, Assam
30	Tripura	30,147	883	1(Agartala)
31	Manipur	13,891	614	Common State Bench of GSTAT at Guwahati, Assam
32	Nagaland	10,212	566	Proposed one Bench
33	Mizoram	7,534	418	1 (Aizwal)
34	Andaman and Nicobar Islands	5,660	373	Common State Bench of W.B. (Kolkata)- proposed by GSTCS
35	Ladakh	7,907	333	Common State Bench of Jammu & Kashmir-- proposed by GSTCS
36	Lakshadweep	347	21	Common State Bench of Kerala - proposed by GSTCS
Grand Total		1,39,76,308	13,20,420	36

Casinos, Race Courses & Online Gaming

Recommendations of 50th GST Council Meeting

Legal Framework

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

Background

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

Constitution of Group of Ministers (GoM)

GST Council in its 42nd meeting held in October, 2020 constituted the Group of Ministers (GoM) to look into the issues related to taxation on casinos, horse racing and online gaming.

Terms of Reference

- To examine the issue of valuation of services provided by Casinos, Race courses and online gaming portals and taxability of certain transactions in a casino, with reference to the current legal provisions and orders of Courts on related matters.
- To examine whether any change is required in the legal provisions to adopt any better means of valuation of these services.
- To examine the administration of such valuation provisions if an alternative means of valuation is recommended.
- To examine the impact on other similarly placed services like lottery.

Recommendations of GoM - 1st Report

- GST on activities in casinos, race courses, online gaming and lottery should be uniform (in terms of rate and valuation).
- No distinction should be made merely on the ground that an activity is game of skill or of chance or both.
- GST may be levied at the rate of 28% on all activities namely, Casinos, Race Courses and Online Gaming.
- **Online gaming** to be taxed @28% on full value of the consideration, by whatever name such consideration may be called including contest entry fee, paid by the player for participation in such games without making a distinction between games of skill or chance etc.

Recommendations of GoM - 1st Report

- **Horse Racing** - continue @28% GST on the full value of bets pooled in the totalisator and placed with the bookmakers.
- **Casinos** - 28% GST on full face value of the chips/coins purchased from casino by a player . Once GST is levied on purchase of the chips/coins (on face value), no further GST to apply on the value of the bets placed in each round of betting, including those played with winnings of previous rounds.

Concerns raised against the 1st Report during 47th GST Council meeting

- Will lead to closure of the industry.
- Activities moving into grey markets.
- Pre-GST model and international best practices on taxation of casinos need to be considered.
- Casinos, horse racing and online gaming should not be clubbed together as each activity is completely different.

GoM asked to re-look the report on the whole.

Stakeholder consultations

Representations :

- Casino Association of India
- Turf Authorities of India
- E-gaming Federation (EGF)
- Federation of Indian Fantasy Sports (FIFS)

Legal opinion (submitted by Industry) :

- Shri Deepak Mishra (Ex CJI)
- Shri Harish Salve, Advocate
- M/s Lashmikumaran & Sreedharan

GoM Meetings & Field Visits

GoM Meetings

- 12th July, 2022,
- 5th September, 2022
- 22nd November, 2022.

Field Visits

- Bangalore Turf Club
- Casino , Goa
- Met online Gaming Associations, Bengaluru

Casinos

Rate

- **28%** -All GoM members

Valuation

- Full face value of chips purchased – WB,UP
- GGR – Goa, Meghalaya
- Full face Value with abatement –Maharashtra

Tax on the full face value if the activity constitutes betting and gambling- **Tamil Nadu, Telangana**

Views of GoM acceptable – Gujarat

** GGR (Gross Gaming Revenue) means net value after deducting the chips/coins returned by players*

Online Gaming

Rate

- 18% - Goa
- 28% - other GoM members

Valuation

- Full face value of consideration – WB,UP
- GGR/platform fee – Goa, Meghalaya, Gujarat
- Full face Value with abatement –Maharashtra
- Full face value if activity is betting and gambling – Tamil Nadu ,Telangana
- *GGR (Gross Gaming Revenue) means net value after deducting the payouts to players*

The sum of money retained by the Online Gaming Operator is not part of the actionable claim, hence can be taxed at the rate recommended by the GST Council as supply of services. The amount apart from the retained money, is the amount of actionable claim and can be taxed only if it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e., actionable claims can be taxed under GST only if they pertain to lottery, betting, and gambling. **(Meghalaya)**

Horse Racing

Rate

- 28% - All GoM members

Valuation

- Full face value – WB,UP
- Full face Value with abatement –Maharashtra
- Full face value if activity is betting and gambling – Tamil Nadu, Telangana
- No comments to offer –Goa, Gujarat

The sum of money retained by the Race clubs is not part of the actionable claim, hence can be taxed at the rate recommended by the GST Council as supply of services. The amount apart from the retained money, is the amount of actionable claim and can be taxed only if it is excluded from the purview of Serial no. 6 of schedule III of Section 7 of the CGST/SGST Acts, i.e., actionable claims can be taxed under GST only if they pertain to lottery, betting, and gambling. **(Meghalaya)**

Recommendation of GoM

No consensus could be reached on the issues.

GoM recommends that GST Council may decide.

Discussion held at 50th GST Council Meeting

Casinos

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

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

- Present Practice:

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

Casinos – Tax Revenue

(in Rupees Crore)

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

Race Courses

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

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

Race Courses -Present Practice

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

Race Courses – Tax Revenue

(Value in Rupees Crore)

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

Online Gaming

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

Present Practice:

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

Online Gaming – Tax Revenue

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

**Sample data from 6 States/Zones*

Demand Notices/Litigation

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

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

Demand Notices/Litigation

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

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It is well settled that "games of skill" played with monetary stakes does not partake the character of betting and it still remains within the realm of 'games of skill' only. The term 'betting and gambling' cannot be artificially bifurcated by the Respondents to carve out an exception by stating that 'games of skill' played with monetary stakes can also partake the character of betting and hence, be taxable at the rate of 28%. Trying to do so would result in obliterating well settled distinction between 'games of skill' and 'betting and gambling'. The Respondents have been unable to discharge the burden of proving that the Petitioner's games fall within the category of 'betting and gambling'. Further, no material or legal basis for such a classification of the Petitioner's business has been referred to in the Impugned SCN.

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- The Impugned SCN is premised on the fact that the Petitioner is involved in the supply of 'actionable claim' which is ex-facie erroneous. The Petitioner merely facilitates the playing of skill-based games between users/players on its technology platforms in return for consideration in the form of platform fees, on which the Petitioner has duly deposited GST. 'Actionable claim' if any is between the players, which is also not taxable under GST laws, [as per Entry No.6 of Schedule III of CGST Act] since actionable claims are excluded from the ambit of GST (except for lottery, betting and gambling; exceptions which are of no relevance since the games facilitated by the Petitioner qualify as 'games of skill' as has been confirmed by this Hon'ble Court).

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Actions for making the taxability on Online Gaming

1. Currently lottery, betting and gambling are excluded from Entry 6 of Schedule III thereby liable for GST. Similarly Online Gaming, casinos etc. has to be excluded from said entry 6 of the Schedule III
2. Amendment in the definition of OIDAR
3. Section 14 of IGST Act 2017 deals with the Special Provision for Tax Payment by OIDAR Services Supplier. Need to add the provision for online gaming etc where the supplier is located out of India and providing the service in India.

Online Gaming - Potential

**India to have 235 million
paid gamers by 2025**

Source: RedSeer-Lumikai report

**Predicted to grow to 231
Billion INR by 2025 from 167
Billion INR in 2019.**

Source: FICCI

**India's gaming market is
due to triple in value to over
INR 57,500 crore by 2025**

Source: RedSeer-Lumikai report

Imperative to take a decision

- Litigation - a time consuming process
- Substantial revenue
Implication

Issue No. 1

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

Merits

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

Issue No.2

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

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

Issue No 3

What should be the rate of tax ?

- 28%
- 18%
- 12%

Impact on Lottery

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

Revenue Implications

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

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

Decision of the Council taken in its 50th Meeting

- Amendment to be done in the law to include Casino Race Courses and Online Gaming in lines with lottery, gambling and betting to avoid any litigation and bring clarity.
- Tax Rate recommended @ 28%
- On full face value

Analysis

- GST on these activities would be uniform in terms of rate and valuation.
- The amendments recommended will bring clarity in law as no distinction will be made merely on the ground that an activity is game of skill or of chance or both.
- The decision taken will help reduce the litigation as the law will be clear.
- Casinos to be taxed on full face value of the chips/coins purchased at the entry from casino by a player .

THANK YOU